THE RECORD
OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

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Association Activities

AT THE STATED MEETING on October 16 the Association approved the reports on candidates for judicial office made by the Committee on the Judiciary, Chauncey Belknap, Chairman; the Committee on the City Court of the City of New York, Abraham Shamos, Chairman; and the Committee on the Municipal Court of the City of New York, Charles J. Colgan, Chairman.

The following candidates were found "Outstandingly Qualified:"

SUPREME COURT

Bernard Botein

SURROGATE'S COURT, NEW YORK COUNTY

Joseph A. Cox

MUNICIPAL COURT

Eugene B. McAuliffe

The following candidates were found "Qualified:"

SUPREME COURT

Arthur G. Klein — William Mertens

SURROGATE'S COURT, NEW YORK COUNTY

Morton Baum S. Samuel DiFalco
John E. McAniff

COURT OF GENERAL SESSIONS

Irwin D. Davidson Thomas Dickens
Charles Marks P. J. Picariello
Maxwell Shapiro

CITY COURT

Oscar Garcia-Rivera Murray Koenig
Emilio Nunez Nathan A. Lashin
George Salvatore

MUNICIPAL COURT

Louis Peck J. Daniel Fink
Morris H. Linderman John J. Cullen
Oliver D. Williams Jac M. Wolff
Stanley M. Douglas Guy Gilbert Ribaudo
Irving P. Kartell Margaret Mary J. Mangan
Irving C. Maltz Millard L. Midonick
Xavier C. Riccobono Charles S. Whitman, Jr.
Meyer Licht Augustine B. Casey
Alexander Salottolo John J. Kelly
John M. A. Blair

The following four candidates were found "Not Qualified:"

COURT OF GENERAL SESSIONS

Philip Watson

MUNICIPAL COURT

Sidney Burstein William T. O'Connell
Edward A. Bailey

The Stated Meeting approved the establishment of a new Committee on Trademarks and Unfair Competition, and voted to

defer action on a report on Civil Arrest and Execution Against the Person presented by the Committee on Law Reform, Robert B. von Mehren, Chairman.

ERNEST A. GROSS, Chairman of the Committee on Post-Admission Legal Education, has announced the designation of the following Section Chairmen for the coming year: Chester T. Lane, Section on Administrative Law and Procedure; Charles H. Willard, Section on Banking, Corporation and Business Law; Thomas E. Monaghan, Section on Corporate Law Departments; Samuel C. Coleman, Section on Jurisprudence and Comparative Law; Howard Lichtenstein, Section on Labor Law; Edward C. McLean, Section on Litigation; Milton Young, Section on Taxation; John E. F. Wood, Section on Trade Regulation; and Albert Mannheimer, Section on Wills, Trusts and Estates.

The first lecture in the Meeting Hall sponsored by the Committee was delivered by Dudley B. Bonsal, Chairman of the Special Committee on the Federal Loyalty-Security Program, and Chairman of the Executive Committee. Mr. Bonsal spoke on the work of his Committee and the recommendations made in its report published in July by Dodd Mead & Company. Mr. Bonsal's lecture will be published in the December issue of THE RECORD.

THE FOLLOWING letter from Bethuel M. Webster, addressed to the Treasurer of the Association, will be of interest to friends of The New York Law Society:

"Dear Mr. Treasurer:

"I am glad to send you herewith a check of Bankers Trust Company dated July 10 for $234.16 to the order of The Association of the Bar of the City of New York Fund, Inc. The proceeds of this check should be used for legal research consistent with the powers and purposes of the Fund, with preference, however, to activities of the sort

conducted by the Special Committee on the Administration of Justice.

"This contribution represents the balance in a special account held by my late partner, Thomas Witter Chrystie, as Treasurer of The New York Law Society. The balance was made up mostly of royalties from the sale of a book on the Torrens System written in the 30's by Professor Richard Powell of Columbia under the auspices of The Law Society. (The Torrens System was remote from the normal interests of the Society, and I cannot now recall how we happened to get into it. For the Society originated in work done by Edward S. Greenbaum, Robert M. Benjamin, Kenneth Dayton, and others for the Survey of Litigation in New York City conducted by the late Herman Oliphant for the short-lived Institute of Law, Johns Hopkins University, of which Professor Oliphant was Director.)

"The New York Law Society itself, the interests and attachments of which persist among members, was a group worth remembering. It included C. C. Burlingham, Charles E. Clark, William O. Douglas, Thomas E. Dewey, Robert P. Patterson, Harold R. Medina, Robert M. Benjamin, Eli Whitney Debevoise, Roswell Magill, Thomas Witter Chrystie, Kenneth Dayton, Clarence V. Opper, Whitney North Seymour, Francis H. Horan, Edward S. Greenbaum, George A. Spiegelberg, F. W. H. Adams, Barent Ten Eyck, Porter R. Chandler, E. J. Ennis, Walter Gellhorn, Robert L. Finley, Paul R. Hays, David Teitelbaum, and a few others whose names now escape recollection. Tom Chrystie was the last Treasurer, and I was the last President. The group has not met since one day in about 1942, when your predecessor, George Spiegelberg, attended a meeting at The Lunch Club in the uniform of a Major of the United States Army.

"Had Tom Chrystie lived he might have been persuaded to apply the balance toward the expense of a reunion. After his death it seemed more appropriate to

apply an informal *Cy Pres* and to give what remains in the account to the Fund of the Association. At least that disposition was one which Bankers Trust Company would accept as consistent with the formal objectives of the Society, whereas an effort to apply the deposit to the entertainment of surviving members might have raised questions.

Yours respectfully,

Bethuel M. Webster"

AT ITS ORGANIZATION meeting the Committee on Municipal Affairs, Arthur H. Goldberg, Chairman, had as its guest James Felt, Chairman of the City Planning Commission. Among other problems Mr. Felt discussed with the Committee was whether the 1916 Zoning Resolution should be replaced. The Chairman announced the appointment of subcommittees to deal with the following matters: legislation, zoning, city excise taxes, housing, state constitutional convention, investment of city funds and expansion of municipal areas.

THE SPECIAL COMMITTEE on the Administration of Justice, Francis H. Horan, Chairman, has distributed to the legislature, judges and interested civic groups its report on the most recent proposals of The Temporary Commission on the Courts. The report entitled "Court Reform and the Citizen—1956" which was drafted by John E. Lockwood, a member of the Committee, is published in this issue of THE RECORD.

THE CHAIRMAN of the Special Committee to Study Defender Systems, Robert B. von Mehren, and the Research Director of the Committee, Kenneth R. Frankl, attended the annual meeting of the National Legal Aid Association at Denver. Both Mr. von Mehren and Mr. Frankl described the work of the Special

Committee, which is a joint Committee of the Association and the National Legal Aid Association.

The Committee, financed by a substantial grant from The Fund for the Republic, has examined the operation of defender systems in a number of jurisdictions. It is seeking facts upon which an objective evaluation of the principal systems for the representation of indigent defendants can be based. There are three principal systems: the assigned counsel system in which the court assigns a member of the bar to represent the defendant, the voluntary defender system in which the defendant is represented by an attorney employed by an organization such as the New York Legal Aid Society or the Philadelphia Voluntary Defender Association, and the public defender system in which the defendant is represented by an attorney employed by the city, county or state. The Committee hopes to finish its study in 1957. Its report will be published in book form.

The Committee's staff, Kenneth R. Frankl, formerly Assistant District Attorney of New York County, and Arnold S. Trebach of the Department of Politics, Princeton University, have studied the assigned counsel system in Essex County, New Jersey, the voluntary defender system in New York City, Philadelphia, Penn., and Rochester, New York, and the public defender system in Cook County, Illinois, and Alameda and Marin Counties, California. The Committee's staff will also study the public defender system of Connecticut and the voluntary defender system of Boston, Mass.

In the course of his remarks before the annual meeting, Mr. von Mehren said:

> "The study being undertaken by this joint Committee is unique in many respects. The Committee's membership is perhaps the broadest and the most distinguished of any group that has ever undertaken a similar endeavor. Moreover, the Committee is attempting a thorough-going study of the operation of the various systems of representing indigent defendants in a number of jurisdictions. Finally,

the Committee is committed to no preconceived notion of what the ideal system is.

"It is the sincere hope of the entire membership of the Committee that their work will produce a report which will be helpful to communities which are faced with the question of how indigent defendants should be represented. Much will have been achieved if the report serves to accelerate the excellent work which is already being done in this field by such outstanding organizations as the National Legal Aid Association."

AT THE OCTOBER 23 hearings held by The Temporary Commission on the Courts, of which Harrison Tweed is Chairman, the Association was represented by the President, Francis H. Horan, Chairman of the Special Committee on the Administration of Justice, Jacob L. Isaacs, Chairman, and Howard Hilton Spellman, a member of the Committee on the Domestic Relations Court. All three speakers endorsed the recommendations of the Commission. Mr. Isaacs and Mr. Spellman, for the Committee on the Domestic Relations Court, made the following points:

1. All matters involving family disruption and difficulty and family problems should be heard in a single court and that court should be the Supreme Court of the State of New York, in New York City.

2. It is wiser for Justices of the Supreme Court to be elected on the basis of broad general knowledge and experience and, when so elected, to have such Justices assigned to the family division of the Supreme Court (as contemplated in the Plan) by the Appellate Division, than to have Justices elected specially as Justices of the said family division.

3. Assignments of Justices of the Supreme Court to the family division should be for an appreciable period of time, preferably for at least one year.

4. Present Justices of the Domestic Relations Court who are incumbents at the effective date of the new system should be con-

tinued in office for the balance of their terms subject to assignment, as aforesaid, by the Appellate Division. As death, resignation, retirement or expiration of term of former Domestic Relations Court Judges occurs, no vacancy will be created and these positions will pass out of existence. However, if the term of an incumbent expires before he reaches the age of seventy, the Mayor should, in his discretion, be empowered to appoint such judge to successive terms until the age of seventy is reached. If an incumbent is not so reappointed, no vacancy will occur.

5. The position of "Justice in Domestic Relations" as an adjunct to the Supreme Court to deal with minor matters affecting the family relationship and children which require judicial attention should not be created.

AT ITS ORGANIZATION meeting, the Committee on Legal Aid, Woodson D. Scott, Chairman, had as its guests Judge David N. Edelstein of the Southern District and Eustace Seligman, President of the Legal Aid Society. Judge Edelstein spoke on the need for expansion of legal aid facilities in the federal courts. Mr. Seligman outlined the Society's plans for the coming year.

THE NEW YORK CITY regional rounds of the National Moot Court competition sponsored by the Young Lawyers Committee, Peter S. Heller, Chairman, will be held at the House of the Association on November 8 and 9. Participating law schools are: Brooklyn Law School, Columbia University School of Law, St. John's University School of Law, Fordham University School of Law, New York University School of Law and New York Law School.

The case to be argued this year in the competition involves a petitioner who was convicted of murder in the first degree. He had based his defense on grounds of insanity and raises on appeal questions of wide public and professional interest relating to the existing tests of criminal responsibility.

The winner of the New York City regional rounds will be

awarded possession of the Whitney North Seymour Award, a silver bowl. The award was won last year by Brooklyn Law School. The winning team will be eligible to enter the final rounds of the National Moot Court competition, to be held at the House of the Association in December.

"SOMETHING NEW" was sponsored by the Committee on Entertainment, Roger B. Hunting, Chairman, on the evening of November 2. The Committee provided the forum for "Rouge Atomique," a short play by N. Richard Nash and "The Lawyers," an opera in one act by Richard Owen. The Committee thought it should provide an opportunity for those members of the Association who, on the basis of past performances, may have concluded that the Committee is incapable of serious endeavor. For those members the serious modern play directed and acted by, and the opera composed and directed by members of the Association were presented.

The Calendar of the Association
November and December

(As of October 10, 1956)

November 1 Dinner Meeting of Committee on Copyright
Dinner Meeting of Committee on International Law

November 2 *Something New.* A short play and an opera in one act sponsored by the Entertainment Committee, 8:30 P.M.

November 7 Dinner Meeting of Executive Committee
Meeting of Section on Wills, Trusts and Estates

November 8 New York City Regional Rounds of the National Moot Court Competition. Sponsorship Young Lawyers Committee
Meeting of Medical Jurisprudence Subcommittee on Interprofessional Conduct for Legal and Medical Professions

November 9 New York City Regional Rounds of the National Moot Court Competition. Sponsorship Young Lawyers Committee

November 13 Meeting of Committee on Domestic Relations Court
Dinner Meeting of Committee on Federal Legislation
Meeting of Section on Trade Regulation
Dinner Meeting of Committee on Trade Regulation

November 14 Meeting of Section on Banking, Corporation and Business Law
Dinner Meeting of Committee on Bill of Rights
Dinner Meeting of Committee to Study Defender Systems
Dinner Meeting of Committee on Courts of Superior Jurisdiction

November 15 Dinner Meeting of Committee on Municipal Affairs

November 19 Meeting of Library Committee
Dinner Meeting of Committee on Medical Jurisprudence
Dinner Meeting of Committee on Military Justice
Forum—Sponsorship Committee on Military Justice, 8:00 P.M.

November 20 Meeting of Committee on Admissions
Meeting of Section on Jurisprudence and Comparative Law

November 27 Meeting of House Committee

November 28 Dinner Meeting of Committee on Legal Aid
Meeting of Section on Litigation
Dinner Meeting of Committee on Corporate Law

November 29 Meeting of Medical Jurisprudence Subcommittee on Interprofessional Conduct for Legal and Medical Professions

December 3 Dinner Meeting of Committee on Federal Legislation
Dinner Meeting of Committee on Professional Ethics
Meeting of Committee on State Legislation

December 4 Dinner Meeting of Committee on International Law
Meeting of Section on Labor Law
Meeting of Section on Wills, Trusts and Estates

December 5 Dinner Meeting of Executive Committee

December 11 *Stated Meeting of Association, 8:00 P.M. Buffet Supper, 6:15 P.M.*

December 12 Dinner Meeting of Committee on Legal Aid
Dinner Meeting of Committee on Bill of Rights
Dinner Meeting of Committee to Study Defender Systems

December 17 Dinner Meeting of Library Committee

December 18 Dinner Meeting of Committee on Domestic Relations Court
Dinner Meeting of Committee on Courts of Superior Jurisdiction
Meeting of Committee on Admissions

December 19 National Moot Court Competition. Sponsorship Young Lawyers Committee

December 20 National Moot Court Competition. Sponsorship Young Lawyers Committee

December 21 National Moot Court Competition. Sponsorship Young Lawyers Committee

The President's Letter

To the members of the Association:

This letter is being written just before the first Stated Meeting of the Association over which I shall have the honor to preside. This will be the meeting which will consider and act upon the recommendations of the Judiciary, City Court and Municipal Court Committees as to the candidates running this Fall for election to the bench. As a former chairman of the Committee on the Judiciary, and having attended this year's meetings of two of the Committees, I know how thoroughly and objectively each Committee considers the qualifications of each candidate. I hope that the attendance at the Stated Meeting will be truly representative of the membership, so that action at the meeting may also be objective and not unduly influenced by the political and personal supporters of any of the candidates.

I am convinced that this Association will never be able fully to measure up to its objective of obtaining the best qualified judicial candidates until the day comes when the political leaders seek and obtain the views of the organized bar as to the qualifications of those under consideration for nomination. Action after nomination must, of necessity, be less effective.

One of my aims is to intensify efforts to persuade the political authorities that we have no axe to grind for any one, no candidates of our own, but merely a desire to assist them in confining their ultimate choices to those we find qualified for judicial office. Only then shall we be able to render the service the public rightfully expects from us.

LOUIS M. LOEB

October 11, 1956

The New York State Labor Relations Act—An Out-Moded Statute

By David L. Benetar

New York State's adoption of its Labor Relation Act in 1937 represented legislative pioneering in the field of labor relations. In the two decades that have since elapsed, conditions and circumstances in that field have changed markedly, but the New York State Labor Relations Act has remained substantially unchanged and its vanguard position has been lost.

Today the employees and proprietors of intrastate businesses in New York are regulated by an inadequate and out-of-date statute. And our State Labor Relations Board is even undertaking to regulate under the same out-dated law certain interstate enterprises located in New York. The causes and consequences of this statutory obsolescence sharply point up the need for modernizing amendments.

THE CAUSES OF OUR LABOR STATUTE'S OBSOLESCENCE

When the "Little Wagner Act" (as our New York State Labor Relations Law is sometimes known) was enacted, its main purposes were to provide statutory protection for the right of unions to organize workers and to impose a statutory duty on employers to bargain collectively with the majority representative of their employees. It was closely modeled upon the federal Wagner Act which was passed to fulfill the same purpose on the national scene. The swiftly moving developments of the last twenty years have vastly altered the vulnerable position of the fledgling unions whose broadened organizing drives were just getting under way in the middle thirties. The place of the union in American in-

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Editor's Note: Mr. Benetar is a former Chairman of the Association's Committee on Labor and Social Security Legislation, and is presently serving as a member of the Committee on Grievances. He is a contributor to many legal publications.

dustry has become firm and secure. So firm and so secure that new needs for statutory protection in the labor relations field have arisen—this time to safeguard the rights of the public, employees and employers against union abuses of power. This became so evident to Congress that in 1947 it made important changes in the federal statute to provide the statutory safeguards needed by these groups. These amendments were embodied in the Labor Management Relations Act, 1947, also known as the Taft-Hartley Act. Thus, although the model on which the New York law was patterned has been modernized and brought up to date, the New York law has not been altered to meet the needs of the changing times.

The Taft-Hartley Act in its entirety has been criticized severely and its total repeal has been heatedly urged. But objective analysis of its provisions shows many salutary restraints on theretofore uncurbed power and reveals a high emotional content in the demands for complete revocation of the law. Some of these provisions are now to be discussed.

PROTECTION TO THE PUBLIC AND TO EMPLOYEES

Rivalry between unions, leading to strikes over the right to perform particular work assignments, have subjected the public to totally unjustified loss and inconvenience. Disputes of this nature have broken out most frequently, as far as intrastate business is concerned, in the building trades. Under the federal statute, striking in a situation of this kind is an unfair labor practice and may be enjoined [Sec. 8 (b) (4) (d)]; and if the rival unions do not work out their own solution, the National Labor Relations Board is charged with the duty of working one out for them. No corresponding provision is contained in the New York State law.

There is no adequate protection in New York against the closed union and the closed shop. Where a union supplying workers to intrastate employers chooses to close its membership to all save a few who qualify by relationship or other close ties to pre-

sent members, it may do so. It may also fix initiation fees in an amount far out of the reach of most working men.

On top of all the foregoing, the same unions may demand and insist upon closed shop provisions which will give them complete control over the hiring of all new employees. The consequence of this permissiveness has been that employees have had to go to the courts to seek protection for their right to earn a livelihood. The New York law on this subject has been summarized in the following language:[1]

> "New York refuses to invalidate closed shop contracts on the ground of monopoly, holding that any evil in the monopoly of the labor market by a labor organization *is a matter to be considered by the legislature, not by the courts.* . . . Even where the union refuses to admit workers into membership, New York will not compel such union to permit non-union men to be employed where there is a closed shop agreement. This is based on the theory that the right of a worker to freely engage in his lawful calling is limited by the right of labor organizations to unionize for a lawful end where the means employed are lawful. As a result, a worker who had been given a permit to work, was dismissed from his employment when his application for membership was rejected and his permit taken away after the union admitted other members."
>
> (*Italics* ours)

Emboldened by what it considered to be complete freedom from all restrictions as far as closed shop and closed union were concerned, one union went so far as to sign a closed shop contract and then to refuse union membership to applicants who were in the employ of the company at the time the contract was made. The effect of this action, if unchecked, would have been to require membership in the union as a condition of a worker's continued employment and then to close the door of union member-

[1] The Closed Shop Coupled with the Closed Union. David J. Weinblatt Intramural Law Review NYU 5:43–57 N'49.

ship against him. When presented with this shockingly unfair situation in *Clark v. Curtis,* 273 App. Div. 797, aff'd 297 N.Y. 1014 (1948), the courts held sufficient a complaint, brought by the debarred employees, which sought in the alternative to compel the defendant union to accept them as members or to enjoin enforcement of the closed shop agreement.

While the courts have felt free to deal with so aggravated a case of abuse as that just discussed, they have been loath to interfere in any situation falling short of that in the *Curtis* case. It is still the law of New York that the closed shop is legal. And employees seeking membership in a union, as a preliminary to applying for work in a closed shop, may still be rejected by the union for cause or without cause [*Murphy, et al v. Higgins,* 12 NYS 2d 913, aff'd 260 App. Div. 854 (1940)]

The 1947 amendments to the federal law prevented abuses of the type we have been discussing by outlawing the closed shop and hiring hall in all enterprises under National Labor Relations Board jurisdiction and by providing that no union security clause in any labor contract can require discharge of an employee who tenders his periodic dues and initiation fees to the union [Secs. 8 (a) (3), 8 (b) (2)]. Protection against exorbitant initiation fees is likewise provided under the national law which gives the National Labor Relations Board the right to prosecute as an unfair labor practice a requirement of excessive or discriminatory fees [Sec. 8 (b) (5)].

Under the national law it is an unfair labor practice for a union to restrain or coerce an employee in the exercise of his right either to join a union and to engage in other concerted activities for the purpose of collective bargaining or to refrain from such activities [Sec. 8 (b) (1)]. This means that a worker who is about to choose between rival unions or to choose no union at all is protected by the federal statute against threats and coercion. He does not have to overcome the natural reluctance of a magistrate or justice of the peace to interfere in a labor dispute and sustain his charge beyond reasonable doubt. He may obtain relief from the very board to which the offending union must apply if it

wishes labor board certified status. The New York law contains no corresponding protection for employees of intrastate employers in this state.

When a collective bargaining agent has lost the confidence of its employee constituents, the employees may call for a decertification of the bargaining agent under the federal law. No such relief is provided by state law.

Modernizing amendments of the federal law prohibit the use of labor board facilities by unions whose officials fail or refuse to execute non-Communist affidavits. The state law contains no provision on this subject.

PROTECTION TO EMPLOYERS

Employers under the national law are guaranteed the right of free speech by statute in the following terms [Sec. 8 (c)]:

> "(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual forms, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

Local employers are not. While the state board in recent years has, as a matter of policy, generally followed the federal statute in this regard,[8] there is no requirement that it continue to do so or that it do so to the full extent of the federal statute. The protection of this right should be safeguarded in New York by statute, not by mere administrative policy subject to change at any time.

Under the New York State law an employer may be guilty of a refusal to bargain, but a union may not. The 1947 amendments to the federal law corrected this inequity in the national statute [Sec. 8 (b) (3)]. Intransigence has not been found in practice to

[8] *Matter of Toffenetti Restaurant Co., Inc.*, 16 SLRB 252 (1953); *Matter of National Transportation Co., Inc.*, 19 SLRB No. 47 (1956).

be confined to employers. Unions, too, have been known to take obdurate positions which have blocked rather than promoted collective bargaining. When this occurs there is not the slightest reason for absolving a union from the consequences of its own obduracy or of withholding power from the state labor board effective to deal with the subject.

The national law has recognized that supervisors are a part of management. Thus, the supervisory employees of employers subject to the federal act are excluded from coverage of that act and, indeed, from the coverage of any law relating to collective bargaining (Sec. 14). The New York State law does not provide for this exclusion. The New York State board not only considers supervisors as employees covered by the act but will actually certify the same local union to represent both supervisors and rank and file workers. Its policy in this regard was enunciated in 1947 over the protest and dissent of a member who later became its chairman and who saw in this practice "so crass and fundamental a conflict" between the supervisor's duties, on one hand, and his union loyalties, on the other, that he felt constrained to oppose this practice [*Matter of Rochester Coal Industry, Inc.* 19 LRRM 1176 (NYSLRB Jan., 1947)].

Section 303 of the Labor Management Relations Act, 1947 provides, among other things, that damages may be recovered against a labor organization which pickets for the purpose of forcing an employer to recognize one union when another has been certified as collective bargaining agent under the law. While injunctive relief may be obtained in this situation in New York,[8] there is no basis under existing New York law for the recovery of the damages, which the federal act provides. There clearly should be.

Protecting unions and employers alike from stale claims and after-thoughts is a six months statute of limitations on the filing of unfair labor practice charges provided in Section 10 (b) of the national law. The state law is devoid of any provision on this subject.

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[8] *Florsheim Shoe Store Co. v. Shoe Salesmen's Union*, 288 N.Y. 188 (1942).

The foregoing instances are not intended as a complete listing of statutory deficiencies which have been cured by amendment of the national act but not of our state act. They are intended simply as illustrative of some of the voids in the present state law.

JURISDICTIONAL CONFLICT

There is another unfortunate consequence of New York's failure to keep pace with the changing labor relations picture. An increasing number of employees and employers are in an ill-defined zone where the question whether they are covered by the federal act or by the state law is in considerable doubt. The creation of this class of unplaced persons has come about in this way: The National Labor Relations Board has jurisdiction over all businesses which are engaged in interstate commerce or which affect such commerce. The United States Supreme Court has held that once National Labor Relations Board jurisdiction is found to exist over any employer (or even over the industry in which he is engaged) state labor board jurisdiction over the same employer is prohibited.[4] If the National Board exercised its jurisdiction over all the businesses it is legally entitled to regulate, the division of spheres of influence between the National Board and our state board would still be confused. This confusion cannot be avoided in borderline cases where an employer's activities leave room for doubt whether it is in fact engaged in interstate commerce. Nor can confusion be avoided in cases where the question of National Board jurisdiction depends upon a disputed question as to the effect of that employer's activities on interstate commerce. But this unavoidable confusion has been unnecessarily compounded by virtue of the following situation:

The National Board does not exercise its jurisdiction to the hilt. Because of budgetary and manpower limitations, among other reasons, it has sharply contracted its intake policy during

[4] *Bethlehem Steel Company v. New York Labor Relations Board*, 330 U.S. 767 (1947); *LaCrosse Telephone Corporation v. Wisconsin Employment Relations Board*, 336 U.S. 18 (1949); *Garner v. Teamsters Union*, 346 U.S. 485 (1953).

the past few years. By this process it has carved out of its total statutory area a much smaller area within which it has said that it will confine its operations as a matter of *policy*. To a considerable extent the question whether a particular employer comes within the circumscribed area of the Board's policy jurisdiction depends on its dollar volume of business. Those interstate businesses which do not reach the maximum volume figures are rejected by the National Board.[5] The state board has announced its policy of asserting jurisdiction where the National Board declines to exercise its authority.[6] The state board's attempt to implement this policy has met with employer resistance. And naturally so. For the employers over whom the state board seeks to extend regulatory power—for the most part medium to small size firms—are in perhaps the greatest need of statutory protection against union abuses. But the statute under which the state board seeks to regulate them gives the board no power to deal with such abuses.

In the ensuing struggle between employers and the state labor board, the courts have been called upon to intervene. In one case a union filed an unfair labor practice charge with the state board against a taxicab company whose operations did not constitute interstate commerce but did substantially and directly affect such commerce. The National Board clearly had jurisdiction over this company and its operations. The union made no effort to secure action by the National Board but filed directly with the state board. The state board assumed to exercise jurisdiction. The courts ruled against this exercise of power.[7]

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[5] For example, jurisdiction over independent retail stores or retail stores in an intrastate chain (including automobile dealers and other distributors) will be taken by the National Board if their direct out-of-state purchases amount to $1,000,000 or more, or if their purchases of materials originating outside of the state but not directly purchased outside amount to $2,000,000 or more; jurisdiction will be taken over similar establishments which form part of an interstate chain either where they meet the above requirement or where the gross sales of the entire chain amount to $10,000,000 or more.

[6] *Raisch Motors*, 35 LRRM 1631 (1955).

[7] *Wags v. S.L.R.B.*, 130 NYS (2d) 731, aff'd. 284 App. Div. 883 (1954), reargu. den. 234 App. Div. 1036, appeal to Court of Appeals withdrawn.

Thus we have a growing conflict between a state governmental agency which attempts to regulate interstate employers and the employers who resist such regulations because the state law does not afford them the protection which the federal statute provides. There is no need for this kind of pulling and tugging.

Section 10a of the Labor Management Relations Act, 1947 provides the conditions under which the National Board may cede jurisdiction by agreement with a state agency. Under the predecessor section contained in the Wagner Act, cession agreements between the National Board and the New York State Board were made and thus questions and conflict were eliminated. But there is an additional proviso in the present federal law which did not appear in the Wagner Act. This proviso states that cession may not be granted to any state board if "the provision of the state or territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

By this proviso Congress manifested its intention to provide a uniform labor law so far as in its power to do so. We believe such uniformity is desirable. In an industry drawing its labor from the same area there is no sound reason why one firm with a large volume of business should be subject to regulation under the national law and its smaller competitor subject to regulation by a state law containing materially different provisions. Much less is there reason—and yet it could happen if a state board may act whenever the National Board refuses to do so—that a single firm could in one year be subject to national law and in the next year subject to a differing state law simply because the volume of its sales varied between years.

We do not believe the national act is a perfect statute. But we believe it is a substantially better statute than the labor law under which New York State is presently operating. There is a simple way to eliminate jurisdictional conflict. This is by conforming the state law to the national law. Such conformity would not have to exist in every detail and particular. Substantial conformity

would open the door to cession agreements. And it would restore on an unassailable basis the caseload which was lost by our state agency or, at the very least, rendered doubtful and vulnerable when the national law was changed but the New York State law was not.

Revision, enactment or repeal of a labor law in this state or anywhere else in the land poses serious political problems to the legislator so engaged. The ordinary standards for gauging the adequacy and fairness of a statute are often bent and sometimes broken in the storm of feelings aroused on this subject. This is entirely understandable. But this should not prevent unemotional thinking by the community as a whole. It is hoped this discussion may stimulate consideration of that type. If the viewpoint here expressed is found to have validity, leadership by the bar in furthering it would be in keeping both with the training and with the best traditions of the bar.

Court Reform and the Citizen—1956

A Report by the Special Committee on the Administration of Justice on a Proposed Simplified State-wide Court System

This report of the Special Committee on the Administration of Justice of The Association of the Bar of the City of New York contains a summary of the recently-published Plan of The Temporary Commission on the Courts for a Simplified State-Wide Court System, together with this Committee's comments and suggestions.

This Committee wholeheartedly supports the Temporary Commission's Plan for a long-overdue reorganization of the court system of New York State.

INTRODUCTION

The Temporary Commission on the Courts was created by the New York State Legislature in 1953. Its distinguished members, drawn from the ranks of the Legislature and the Bar, were appointed by the Governor; under the leadership of its chairman, Harrison Tweed, and supported by an able staff, the Commission has been continuously engaged for 3 years in a comprehensive study of the court system of this State. From time to time the Commission has made interim recommendations to the Legislature, a number of which have been adopted; the most notable are the legislation creating the Judicial Conference in 1955, the program adopted in 1955 for expanded probation services, and the 1956 Youth Court Act.

A year ago the Commission published a report of its subcommittee headed by Louis M. Loeb which set forth in broad

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Editor's Note: This is the second report of the Special Committee which was appointed in 1952 and has been engaged since then in making reports and recommendations on the courts and analyses of the proposals of The Temporary Commission on the Courts. Reprints are available in the office of the Executive Secretary.

outline a proposal for a fundamental reorganization of the entire court system. Numerous hearings were held throughout the State on this proposal. The Commission's current recommendation involves a number of modifications of the Loeb proposal.

The Commission has now published a comprehensive report containing a detailed discussion of the present court system and the Commission's plan for court reorganization. This plan is incorporated into a draft of a new Judiciary Article of the State Constitution, which the Commission expects to submit to the 1957 session of the Legislature. Further hearings on the proposed Judiciary Article will be held prior to its submission to the Legislature.

The most important modification of the Loeb proposal has been the Commission's decision to recommend an organization for the trial courts in New York City substantially different from that recommended for the rest of the State. Also the Commission has dropped the Loeb report's suggestion of new names for the various courts. In the present plan the traditional names are continued.

This Committee antedates The Temporary Commission on the Courts, having been created by The Association of the Bar of the City of New York in 1952 for the purpose of studying and reporting on the courts of New York and their administration. The Committee's Report and Study entitled "Bad Housekeeping—The Administration of the New York Courts" appeared in 1954. Last year the Committee published "The Citizen and the Courts," a report which endorsed the basic approach of the Loeb subcommittee.

I. THE ESSENTIAL REQUIREMENTS FOR AN EFFECTIVE COURT SYSTEM

As set forth in its 1955 report, this Committee believes that there are three essential requirements for an effective court system—jurisdictional unity, administrative unity and fiscal unity.

A. *Jurisdictional unity*

If a citizen has a legal case, he should be able to go to court and get that case decided, quickly and completely. He should not have to run the risk of discovering too late that he has picked the wrong court, or that the court he has picked can decide only part of his case, and that he must go to another court to obtain the justice to which he is entitled.

Today in New York there are many different courts, most of which deal with particular types of cases and have no power to deal with other types. It is up to the citizen to decide at his peril what court he should bring his case in. It is no answer to say that he will be represented by a lawyer and his lawyer should know enough to pick the right court. The court must be chosen at the start of the case, often before the lawyer can develop sufficient knowledge of the facts. To make the choice the lawyer must sometimes engage in time-consuming research, and thereby involve his client in additional and unnecessary expense. Through taxes, moreover, the citizen pays the salary of the judge and court personnel whose time is wasted in deciding complex jurisdictional questions when lawyers fail to agree on the choice of court. Too often there is no one court competent to handle all aspects of the case. Multiple proceedings multiply the expense to the citizen.

Some details on the present court system will show how far New York State falls short of the standard of jurisdictional unity. There are 15 separate types of trial courts in the State. In New York City alone on any particular day perhaps one hundred trials are going on in 11 different types of trial courts. Each one has a different jurisdiction; many of them have overlapping jurisdictions. Elsewhere, in a given county one can find the Supreme Court, County Court, Children's Court, Surrogate's Court, Court of Claims, and an assortment of City Courts, Police Justice Courts, and Justice of the Peace Courts. Courts of the same name differ in jurisdiction from place to place. Courts with identical jurisdiction have different names. Juris-

dictions frequently overlap: in Westchester County, for example, an automobile negligence case may be brought in any of six different City Courts, as well as the County Court and Supreme Court, and the procedure differs in each one. Sometimes various aspects of a single controversy must be brought in different courts. This fragmentation of jurisdiction thwarts justice in the most shocking fashion in the general area of problems relating to the family and children, yet this is precisely the area which touches most closely the daily life of the average citizen.

Fragmentation of jurisdiction not only thwarts justice but in many upstate areas it makes necessary an army of part-time judges to man the specialized courts. There is not enough work in any one of the specialized courts to keep a judge occupied full-time; hence he is paid a reduced salary and allowed to practice law. The Temporary Commission regards this mixing of judicial responsibility with private practice as highly undesirable, and this Committee fully concurs in its criticism.

Jurisdictional unity at one stroke will eliminate this catalogue of defects in the present court system.

B. *Administrative unity*

If the average citizen is only dimly aware of the way in which cases are decided in the courts, he is probably far less aware of the way in which the system of courts is administered.

If a judge in one court has little to do and another court is overloaded, can that judge be assigned to the overloaded court?

Under our present system, the answer is no, except to a limited degree in New York City.

Can cases be transferred from one court to another, in order to even out the work load? Again the answer is almost always no.

There is no real transfer of cases and almost no transfer of judges, yet today in some courts a citizen must wait up to 3½ years for the trial of his case.

What about the judge's supporting staff of legal assistants,

court clerks, probation officers, etc.? Are they paid throughout the state at the same rate for the same type of job? Not under the present system. It is demoralizing as well as inefficient for a court official in a busy court in one area to be paid substantially less than what a colleague in a less active court is paid for the same job.

Some judges have no assistants; others have more than they can use.

These are only samples of the inefficiencies of our present non-integrated court system.

Administration of the courts has a direct bearing on the kind of a job a judge can do. If some judges are overworked, while others have not enough to do, justice will suffer. If judges are forced to spend too much time on administrative details, or on work which assistants should do for them, justice will suffer.

What is needed is a system of court administration which, so far as practicable, will equalize the work loads of the various courts and judges, and bring the services of judges and court personnel to bear where most needed.

The problem of administrative unity is intimately bound up with the problem of jurisdictional unity. As long as there is chaos in the jurisdiction of the courts, unity and efficiency of administration is very difficult to achieve. The first point of attack is the jurisdiction of the courts themselves.

C. *Fiscal unity*

Today there is no overall budget for the courts of New York State, despite the fact that the total expense of our Court system is in the neighborhood of $70,000,000 a year.

Counties of comparable size and population have wide variance in total expenses. Some courts in New York City can fix their own budget and request the City to supply the funds, without any power on the City's part to refuse or reduce the request. Elsewhere, many judges must plead for funds annually before the local governmental body which controls appropria-

tions, whose membership may be composed of lawyers who practice in their courts.

For these reasons it is imperative that there be one budget and one fiscal control for the judicial system, covering all courts, judges and court personnel. The citizen as taxpayer is entitled to know the cost of justice. The Legislature in voting appropriations should be able to find out what the money is going for. An overall budget for fiscal control goes hand in hand with administrative control.

II. PLAN OF THE TEMPORARY COMMISSION ON THE COURTS

The Temporary Commission on the Courts has put forward a plan for basic reorganization of our entire court system, in order to achieve jurisdictional unity, administrative unity and fiscal unity.

A. *Jurisdictional unity*

In place of the present labyrinth of courts, most of them restricted as to the types of cases they can decide, the Commission proposes a unified state-wide system consisting of the following courts:

(1) The Court of Appeals—continued as the highest appellate court.

(2) The Appellate Division—continued as the intermediate court to decide appeals, organized geographically into four departments.

(3) The Supreme Court—continued as the trial court of unlimited jurisdiction to try any type of case, organized into eleven districts, with a broader exclusive jurisdiction in New York City than elsewhere.

(4) The County Court outside of New York City—continued as a trial court of limited jurisdiction but with its jurisdiction broadened to include that of the present County Court, Children's Court and Surrogate's Court in each county.

(5) The General Court of the City of New York—a new trial

court of limited jurisdiction which will absorb the Court of Special Sessions, the City Court, the Municipal Court and the City Magistrates' Court.

(6) The Magistrates' Court—a new court to be organized where needed in towns and cities outside New York City to handle minor civil and criminal matters and to replace the Justice of the Peace Courts and other inferior courts.

In short, all of the following existing courts would be replaced:

Court of Claims
Surrogate's Court (62 counties)
Court of General Sessions of the County of New York
County Courts of Bronx, Kings, Queens and Richmond Counties
Children's Court (57 counties)
Court of Domestic Relations of the City of New York (including the Family Court and the Children's Court)
City Court of the City of New York
Court of Special Sessions of the City of New York
Municipal Court of the City of New York
City Magistrates' Courts of the City of New York
District Court of Nassau County
Justice of the Peace Courts (929 towns)
Police Justice Courts (in most of 539 incorporated villages)
Various local inferior courts (87 courts in 61 cities outside New York City with eight different names, including City Court, Traffic Court, Recorder's Court and Police Courts).

Under the Commission's proposal there will be liberal provision for transfer of cases and assignment of judges. Part-time judges will be abolished, except for magistrates handling minor matters.

B. *Administrative unity*

The Commission proposes that the Judicial Conference be in charge of the general administration of the entire court

system and that particular administrative powers, such as the assignment of judges, be exercised by the Appellate Division in the various Departments.

C. *Fiscal unity*

There will be a separate budget for the entire judicial system, so that a comprehensive plan of financing and expenditure can be put into effect. The expense of the Court of Appeals and the Appellate Division will continue to be borne by the State, and the State will also bear a portion of the expense of the Supreme Court. The counties will share in financing the Supreme Court and County Courts, and the towns and cities will bear the expense of the Magistrates' Courts. Regardless of the allocation of expenses, the result will be that each dollar spent will be used to the fullest advantage through the state-wide and integrated budget system. It is the Commission's conclusion that this improved method of financing is one of the major benefits to be attained from a reorganized court system.

III. THE COMMISSION'S PLAN IN DETAIL

A. *General Considerations*

1. *Constitutional problems.* Because of the fundamental nature of the Temporary Commission's reforms, it will be necessary to amend the State Constitution. The Commission's plan is embodied in a draft of a Judiciary Article to replace the present Judiciary Article of the Constitution.

Amendment of the State Constitution is a cumbersome process. The proposed Judiciary Article will be submitted to the 1957 session of the Legislature. Then, if approved at that session or in 1958, it must pass the Legislature a second time in 1959. If passed again, it will be submitted to the voters at the general election in the fall of 1959. If they in turn approve, the Judiciary Article will finally be adopted.

An alternative route is available. In 1957 the people will vote

whether or not to hold a constitutional convention, and based on past experience the convention probably will be held in 1959. It would be possible at this convention to have the new Judiciary Article adopted either as an amendment to the present constitution or as a part of an entirely new constitution for the State. The amendment or the new constitution, including the Judiciary Article, would then go before the voters in the 1959 general election.

The need for a complete overhaul of the court system is urgent. The Legislature established the Temporary Commission for the express purpose of studying the court problem and developing a plan for reform; the Commission has devoted three years to this task. Under the circumstances this Committee believes that this reform should be pressed forward now, rather than being placed on the shelf until the constitutional convention, which may or may not be held three years from now.

In addition, the danger would exist in the constitutional convention that the Judiciary Article might become tied to other controversial measures adopted by the convention. In such case entirely irrelevant issues might lead to rejection by the voters.

Nevertheless, supporters of the Commission's proposal must be prepared if necessary to take action to adopt the new Judiciary Article at the constitutional convention.

Under the Commission's Plan, the Judiciary Article, if approved by the voters in 1959, will in general not become effective until January 1, 1961. The delay is designed to give the Legislature sufficient time for enactment of the legislation which will be required to implement its provisions. The Commission holds open for consideration, however, the possibility that the change-over for courts other than the County Court and Magistrates' Court will take place on January 1, 1960, which would allow New York City the benefits of the new system at the earliest possible date.

One key point must not be lost sight of: The reform of our court system can be achieved only through a sustained effort over a period of at least three more years. Two successive Legis-

latures must be convinced of the necessity for court reform and the validity of the Commission's proposals; then the people at the polls must add their endorsement. Even after adoption of the Judiciary Article, essential legislation must be passed. A failure at any stage of the constitutional amending process will be fatal; enactment of inadequate implementing legislation could be crippling.

In short, this program calls for a prolonged and unrelenting effort on the part of all those interested in court reform, laymen even more than lawyers, for court reform is a matter vital to all citizens and one which far transcends the interests of the legal profession alone.

2. *The implementing legislation.* The Temporary Commission's Plan contains an extensive explanation of the provisions of the draft Judiciary Article, which forms an appendix to the report. Many matters, however, are not specifically covered in the report or are only briefly sketched out. Unlike the present Judiciary Article of the State Constitution, encrusted as it is with detailed provisions accumulated over many years, the proposed Judiciary Article is purposely general, laying down only the vital first principles for the new court system. Flexibility is retained, and some controversy postponed, by leaving to legislation the resolution of many specific questions.

In this Committee's view, the first and essential step in achieving court reform is to obtain agreement and support on its principal features, embodied in the proposed Judiciary Article. The details can wait. Legislation implementing the Judiciary Article, however, will itself require careful study and evaluation by the Temporary Commission and the Legislature and will have to resolve many questions not covered by the Judiciary Article. This legislation too will be extremely important to all concerned with court reform.

Although not directly concerned with matters to be left to legislation, in certain areas the Commission's Plan suggests the likely course for the Legislature to follow. In these areas, this Committee has attempted to follow these leads and fill in some

of the details in order to give a clearer picture of how the new court system will work. Some may disagree with these suggestions. Disagreement on details, however, should certainly not lead to opposition to the Judiciary Article as a whole, or to the principles of court reform which underlie it. The implementing legislation can, and doubtless will, make significant modifications of the Commission's present proposal. This can be done without departing from the essential elements of the reorganized court system, embodied in the Judiciary Article itself.

3. *The differing problems of New York City and the rest of the State.* The Commission's report recognizes the existence of certain fundamental differences between the court structure needed for New York City and that needed elsewhere in the State. These differences are in large part derived from the fact that New York City is a unified urban community of 8,000,000 people living in a relatively small geographical area, and the fact that the City, rather than the five counties which make up the City, is the basic governmental unit for administrative and fiscal purposes. In New York City, for example, the problem of transportation between counties does not exist, whereas in some rural upstate areas the transportation problem is a real one and tends to bring many cases into the courts of the county which in New York City are handled by city-wide courts. In addition, primarily because it is a national business center, a tremendous volume of commercial legal cases are handled by New York City's courts.

The Commission's proposals in some important respects call for unique treatment of New York City's courts. In other respects, fundamentally different treatment is prescribed for rural areas as opposed to urban areas, with New York City, of course, falling into the latter category.

4. *Specialized courts versus specialized judges.* Inherent in a court system which calls for jurisdictional unity is the abolition of courts whose judges are limited to deciding only one type of case. Many of these judges have in consequence of their specialization developed into recognized experts. Such expert judges are

found particularly in New York City and certain of the larger counties outside the City where one or more judges are occupied full-time in deciding estate, family or criminal cases.

This Committee is in accord with the position taken by the Temporary Commission against preserving courts of special jurisdiction. Such fragmentation of jurisdiction only increases the chances that all aspects of a controversy cannot be determined by one court. All cases should be handled by a unified trial court whose judges will be specialized only to the extent that the volume of business in a particular field justifies setting up various divisions in the court and assigning a judge full-time to handle this particular type of case.

The concept of having a unified trial court handling civil, criminal, probate and other specialized matters is neither new nor radical. Nearly every state in the Union has trial courts which handle both civil and criminal matters, and only sixteen states have separate courts to handle probate matters.

Under the Commission's proposals, it is contemplated that in New York City and the larger counties the volume of cases will result in particular judges handling particular types of cases full-time in one of the divisions of the unified trial court. Furthermore, in all probability, these judges initially will be drawn from the present specialized courts, so that in New York City, for example, the former Surrogates will become Supreme Court judges assigned to the probate division. This group of existing specialized judges will be available at the outset of the new system, and the result should be that any real problem of lack of specialized experience will be postponed for some time, at least until judges begin to be selected for the new unified court.

So far as selection of new judges is concerned, experience has generally shown that the qualities which make a good judge in one specialized field would serve him equally well in any other field; a judge with general legal excellence soon acquires the skills needed to be an excellent judge in a specialized area. Judges of such distinguished specialized courts as the Surrogate's Court and Court of General Sessions in New York County by

and large had no particular experience in their specialty at the time they became judges.

In the last analysis, this Committee believes that the judges of the Appellate Division are best quipped to make the assignments to various divisions, based on their evaluation of their fellow judges.

5. *The specialized divisions and their staffs.* In the more populous areas of the state, the transition from the specialized courts to a single unified court will not involve any loss of opportunity for its judges to acquire expert knowledge of a particular field of law. The Commission's proposal envisages that, depending on the volume of legal business, the unified court will be organized into various divisions, with one or more judges of the unified court assigned to each division on a continuing basis, assisted by the non-judicial staff personnel of the division. Such judges would in effect specialize in one area of the law, but only because the volume of legal business in that area justified their working full-time there. Their staffs also would be specialists and would be drawn from the existing staffs of the specialized courts, supplemented in the areas where such staffs now are non-existent or inadequate.

In New York City the Supreme Court would be divided at least into civil, criminal, probate, family and youth divisions. The General Court in New York City would have a civil and criminal division. Outside of New York City the County Court may have divisions corresponding generally to those of the Supreme Court within the City.

The organization of each division probably will differ in many respects. The terms of a judge's assignment to the various divisions will vary. The Temporary Commission proposes, for example, that a judge assigned to the probate division will serve for at least five years, because of the need for continuity in handling estates. The family division will require unique organizational treatment, because of the nature of its cases and the auxiliary welfare services that will be attached to it. Even the physical facilities of the various divisions should differ: The

facilities of the family division, for instance, undoubtedly should have a number of unique features.

A unified trial court organized by divisions will permit far greater flexibility in the handling of court business. If a particular division becomes overloaded, a judge may be assigned to it temporarily until the backlog of cases is reduced. An example of where this would be of great value is in Kings County. The business of the Surrogate's Court there is at times too voluminous for one judge to handle but is not sufficient to justify having two full-time Surrogates. With a unified trial court an additional judge could be assigned to the probate division of the Supreme Court in Kings County when the need arose. This solution would not be possible under the present system of autonomous courts, with their own jurisdictions and judges.

Furthermore, a unified court will have a pool of judges available for assignment to the various divisions, and any judge who should be found unsuited for a particular division can be reassigned. By contrast, when a judge today is selected for a specialized court, there is nothing that can be done about replacing him during his term if he proves unsuited to its needs.

In short, in the areas of the State which have a great deal of legal business the effect of the divisional arrangement of the unified court will be to preserve the present experience of the specialized judges and their staffs, while at the same time providing a flexibility in disposing of the court's business which cannot be achieved under a system of specialized courts.

In all but the smallest counties, the unified County Court will insure sufficient business to occupy at least one County Court judge full-time in each county, and thereby eliminate the conditions which have given rise to the plethora of part-time judges in most upstate areas. This judge will not be a specialist but will try all types of cases. His court, nevertheless, probably will be organized into divisions corresponding to those of the courts elsewhere, with specialized staff personnel available for

each division to assist the judge in the performance of his duties.

6. *The part-time judge.* In many upstate areas a lawyer is permitted to serve as a judge part of the time and practice law the rest of the time. This phenomenon has developed in part from the fact that in a small community there is not enough legal business in one of the present courts, narrowly restricted as to jurisdiction, to justify employment of a full-time judge. There are obvious weaknesses and possible abuses in the part-time judgeship arrangement. The layman is suspicious when a judge represents one party to a controversy before a brother judge, while the opposing party is represented by a non-judge lawyer. Even if no partiality is shown, inevitably the public will come to believe that the judge tends to favor the judge-represented client. As a corollary, the part-time judge has a distinct advantage in obtaining clients, and often succeeds in preempting the most lucrative legal business in some upstate communities. Furthermore, the non-judge attorney may be at a disadvantage in opposing the judge attorney if he anticipates appearing before that judge in his own court. A part-time judge may also be tempted to shirk his duties as judge in favor of his private practice.

The system of part-time judges is unduly expensive, despite the reduced salaries paid. Often the combined salaries of the part-time judges exceed what might reasonably be paid a full-time judge. Multiple sets of clerks and court attendants may be provided. The rent of the law office of the part-time judge is often paid by the county. This provides him with judicial chambers but also in effect subsidizes his legal practice. Space normally would be available for a full-time judge in county-owned buildings, which may not be used for private business.

Except for magistrates, the proposed reorganization abolishes all part-time judges. By creating in each upstate county at least one trial court for all types of cases, it provides sufficient legal business to justify the employment of a full-time judge at a reasonable salary. The magistrates are the one exception, for reasons discussed later in this report.

B. *Abolition of Existing Courts*

The reorganization will result in the abolition of many of the existing specialized courts; chief among them are the Court of Claims (claims against the State), the Surrogate's Court (matters involving decedents' estates), the County Courts and Court of General Sessions in New York City (criminal matters) and the various courts handling different aspects of the family problem, such as the Children's Courts outside New York City and the Domestic Relations Court in New York City. Because of their professional standing and traditions, some of these specialized courts undoubtedly will die hard, but this Committee believes that no exception can properly be made for any of them.

1. *Court of Claims.* As documented in the Commission's report, the Court of Claims handles a relatively small volume of cases and the type of case handled essentially is the same as those customarily handled by the Supreme Court. Two-thirds of the claims disposed of in 1955, for example, were personal injury cases. This Committee is in accord with the Temporary Commission's view that there is little in favor of the continuation of this court.

The eight present judges of the Court of Claims are continued as judges of the Supreme Court only until the end of their appointive terms. On death, resignation, retirement or expiration of term no vacancies will be created, except that the Governor may reappoint any sitting judge under retirement age on expiration of term.

2. *Surrogates' Courts.* The Surrogate's Court has the jurisdiction of the administration of decedents' estates and the guardianship and adoption of children. At present there is a Surrogate's Court in every county of the State. In 29 counties the Surrogate is also the County Judge. In 33 counties the Surrogate is a separate office, frequently part-time in rural areas.

Many lawyers specialize in the legal work involving decedents' estates. Some Surrogates' Courts have a long and proud reputa-

tion for legal excellence. The Surrogates' Courts also are traditional sources of political patronage. This patronage is often in the form of an appointment by the Surrogate of a special guardian to represent minors or incompetents in legal proceedings involving their property; the fee awarded a special guardian in a large estate often is extremely lucrative. For these varied reasons, many may be loath to disturb the existing organization of the Surrogates' Courts.

Nevertheless, in this Committee's judgment the abolition of the Surrogate's Court is a desirable reform. As the Temporary Commission points out, the great bulk of Surrogate's Court work is purely administrative, with relatively few contested matters requiring the attention of the Surrogate. The administrative work load is handled by a specialized staff of non-judicial personnel, and their skill and industry normally is the key to the satisfactory disposition of the court's business. As an administrative matter, the non-judicial personnel of the Surrogates' Courts can function equally well within the probate division of a trial court with unified jurisdiction. As we have already stated, it is common practice in other states to have probate matters handled by a trial court of general jurisdiction. Moreover, in several upstate counties the same judge handles probate, family, civil and criminal matters.

In the populous areas, the creation of a probate division of the unified court will in effect continue the judges assigned to that division as experts in this important area of the law. These judges would be assigned for five years, in order to provide the necessary continuity in the handling of estate matters. Additional judges could be assigned temporarily as needed. The present staffs of the Surrogates' Courts would be drawn on to supply the staffs for the probate divisions, where they would continue as now to perform their vital role in the disposition of estate business.

One distinct advantage of the new probate division is suggested by the Commission's report: In this division there could be concentrated all the cases which today, because of jurisdictional

limitations, the Surrogate's Court is unable to decide, despite the fact that these cases involve issues which that court properly should decide.

The most obvious examples are the cases involving construction of trusts created by agreement during lifetime, which cannot now be brought in the Surrogate's Court, although it handles the same legal issues when a trust created by someone's will is involved.

Frequently, moreover, one individual will attempt to set up an overall plan to provide for his family, by creating a trust during his lifetime and other trusts in his will. Yet despite his overall plan, today two different courts may have to determine questions concerning the trusts, because the Surrogate's Court has jurisdiction only as to the trusts created under his will.

In addition, needless jurisdictional booby traps now exist for the lawyer representing an estate which owns a substantial interest in a corporation, since most matters involving corporations cannot be decided in the Surrogate's Court.

The Temporary Commission was urged to provide for separate election of judges to the probate division of the Supreme Court, in view of the specialized legal talents required for a judge in that field. This suggestion a majority of the Commission rejected, on the ground that experience had not shown that Surrogates are elected on the basis of their particular qualifications as such, and that men who achieve distinction as Surrogates do so because of their general qualifications as judges, which in turn has occasioned their election.

This Committee concurs with this conclusion, particularly since, as previously noted, the judges of the Appellate Division can be relied on to select from the available group of Supreme Court judges those best qualified for assignment to the probate division.

The present Surrogates in the five counties in New York City will become Supreme Court Justices. Outside New York City all present Surrogates, whether full-time or part-time, will become full-time County Court judges, no longer permitted to practice

law. Upon death, resignation or retirement, a successor will be elected as County Court Judge, unless the county already has a sufficient number of them.

3. *The various family courts.* Many believe that the initial impetus for a basic overhaul of our system came from the recognition of the frustrating jurisdictional confusion which exists among the various courts which handle the problems affecting the family relationship, such as divorce, support, custody of children, etc. Investigation has shown that these problems frequently spring from one deep-rooted family disorder. Our present court system, however, does its best to ignore this fact and to impede the chances for a successful resolution of the family disorder.

As the result of the work of its Committee on the study of the Administration of Laws Relating to the Family this Association has maintained a particular interest in the way our courts handle family problems. In 1954 the Association published "Children and Families in the Courts of New York City," a comprehensive study of these problems by Professor Walter Gellhorn of Columbia Law School.

At present, as the Temporary Commission points out, family problems may find their way to any one of ten different courts. Delinquent and neglected children are treated in the Children's Court outside New York City and in the Domestic Relations Court within the City. Matrimonial actions are handled by the Supreme Court; adoptions by the Surrogate's Court, the County Court and, in some instances, the Children's Court and Domestic Relations Court. Support matters which arise out of matrimonial actions are dealt with by the Supreme Court; otherwise they go to Children's Court or Domestic Relations Court, the City Courts in certain areas, the District Court of Nassau County, the City Magistrates' Courts of the City of New York or the town and village Justice Courts. Paternity proceedings are handled in the Court of Special Sessions in New York City and in the Children's Courts outside of the city. Assaults between members of a family may be handled in any one of seven different courts. Jurisdiction over legal custody and legal guardianship is split between the

Supreme Court and the Surrogate's Court, while physical custody is frequently determined in the Children's Court and the Domestic Relations Court. The Children's Court outside New York City has jurisdiction over aid to physically handicapped children and in certain instances over wayward minors. In New York City the former are handled through an administrative agency and the latter by either Adolescent Term, Home Term, or Girl's Term of the City Magistrate's Court.

Thus, bewildered families are frequently shuttled from court to court in their attempt to secure relief. It is not unusual for a husband and wife to find themselves involved in multiple court proceedings simultaneously, all in different forums. Often the ultimate result is a divorce or annulment proceeding in the Supreme Court and the destruction of a marriage which might have been saved with proper handling by a court at an early stage. In addition, neglect and delinquency of the children of such harassed parents is the almost inevitable by-product of this jurisdictional runaround.

There are other absurdities as well. Different rights and remedies can be obtained in different areas, because the substantive law and the court procedure vary widely in different parts of the state. The Supreme Court determines such sensitive family matters as custody of children in a matrimonial action, yet it does so generally without the benefit of any independent investigation of the family situation. On the other hand, the Children's Court and Domestic Relations Court, courts inferior to the Supreme Court, do have auxiliary services available to assist and advise them in their determinations. This is far from a complete list of the defects in our present family court system, but is sufficient to give a general picture of its present unhappy state and the need for reorganization.

The Commission's proposal is to abolish this multitude of specialized courts and instead to consolidate all aspects of the family problem in a single court. Outside New York City this court will be the County Court in each county. In New York City it will be the Supreme Court. This complies with the follow-

ing requirements laid down by the Commission for a court handling family matters:

1. Broad jurisdiction, including equity powers;
2. Substantial standing in the community;
3. Stature as a court of record on a high level; and
4. Organization consistent with the dominant political subdivision which serves the people of the area.

Outside New York City, particularly in the rural counties, family matters should be handled by a court that is readily available, certainly not beyond the limits of the county. Within the City, where county boundaries are meaningless, the Commission has placed jurisdiction of family matters in the Supreme Court, rather than the General Court, because of the former's greater stature, and the difficult legal questions which frequently are presented along with the social aspects of the family problem.

The present judges of the Domestic Relations Court in New York City are not to be transferred to the Supreme Court since all their number (23) will not be required in the family division of the new Supreme Court. As proposed by a majority of the Commission, they will continue in office as former Domestic Relations Court judges for the balance of their terms. No vacancy will be created upon expiration of term, retirement, death or resignation, except that the Mayor may reappoint a judge whose term expires before retirement age. The former Domestic Relations Court judges will be subject to assignment by the Appellate Division to either the Supreme Court or the General Court. The most experienced of them presumably would be assigned to the Supreme Court to serve in the family division.

Outside New York City all judges of the Children's Court will become judges of the County Court until expiration of their present terms, at which time a vacancy will exist, unless the county would thereby have an excess number of County Court judges.

This Committee is in full accord with the majority of the

Commission with respect to its proposals for the handling of family matters.

4. *The Criminal Courts in New York City.* The specialized criminal courts are found only in New York City, as outside the City criminal cases by and large are handled as part of the general court business. The New York City criminal courts are: the Court of General Sessions in New York County and the County Courts in the other four counties of the City, whose jurisdiction includes all criminal matters which are tried by indictment; the Court of Special Sessions, which has a city-wide jurisdiction over misdemeanors; and the Magistrates' Courts, with jurisdiction over arraignments and petty offenses.

As in the case of the other specialized courts, the argument has been made that the specialized skill of the judges now sitting in these courts would be lost in a court of unified jurisdiction. Again, this Committee believes this argument to be unsound and the Temporary Commission's proposal correct, particularly in view of the fact that the judges and staffs of these courts, and especially the excellent staff of the Court of General Sessions, would be carried over into the criminal divisions of the new Supreme Court and General Court.

The Temporary Commission gives to the Supreme Court in New York City jurisdiction over all criminal matters now disposed of in the County Courts in the City and the Court of General Sessions. The General Court of the City of New York will have jurisdiction over all criminal matters below the degree of felony, including the jurisdiction of the present Court of Special Sessions and also the jurisdiction of the present Magistrates' Courts.

The judges of the County Courts in New York City and the Court of General Sessions will become Supreme Court judges, and presumably will constitute the first judges in the criminal division of that court. Similarly the present judges of the Court of Special Sessions and the City Magistrates' Courts will be transferred to the General Court of the City of New York, and likewise assigned to its criminal division.

C. *The New Courts to be Substituted*

1. *Court of Appeals and Appellate Division.* Both the Court of Appeals and the Appellate Division (in four departments) are continued. The Commission's Plan does not disturb in any way the existing appellate jurisdiction of the Court of Appeals and continues the jurisdiction of the Appellate Division in substantially its present form, although an important addition is made to the Appellate Division's power to administer the inferior courts. The judges of these two courts will continue as such under the new system.

2. *The Supreme Court.* The Supreme Court, organized into judicial districts, continues as the trial court of general and unlimited jurisdiction. It will hold terms of court in each county, and the judges will be elected by the voters of the district for fourteen year terms. While its jurisdiction will be unlimited on both civil and criminal matters, outside New York City it would for the most part handle all civil matters involving more than $6,000 (more than $10,000 in larger counties), all matters involving claims against the State, all equity cases and the trial of those contested matrimonial actions which are transferred to the Supreme Court from the County Court.

Within New York City the Supreme Court will have, in addition to the matters it ordinarily handles at present, jurisdiction over all matters involving decedents' estates, all matters affecting children and the family, all crimes which constitute felonies, and all claims against the State. Within New York City the Supreme Court will be organized into three districts; the present First and Second Districts, with a newly-created Eleventh District for Queens County. The Supreme Court will be organized into divisions and parts for handling of the various specialized matters, as seems most useful in the internal administration of its business.

The Appellate Division of the Department involved will assign judges to these divisions, with those assigned to the pro-

bate division to serve for at least five years. Attached to the family division will be the various ancillary services, such as probation officers, investigators in support proceedings, and possibly a reconciliation service for matrimonial actions.

Appeals from the Supreme Court will go to the Appellate Division of the Department in which the case was tried.

3. *The General Court of the City of New York.* This court would be an inferior court with limited jurisdiction to dispose of the great bulk of relatively minor matters. The jurisdiction of the General Court will include all criminal matters of a degree less than a felony and all civil matters involving less than $10,000. It will be organized on a city-wide basis and will include the jurisdiction now exercised by the City Court, the Municipal Court, Court of Special Sessions and City Magistrates' Courts. The court basically will be organized into a criminal and civil division, with such other divisions and parts as prove necessary. Appeals from the General Court will be taken to the Appellate Term of the Supreme Court, except that all appeals from misdemeanor convictions will be to the Appellate Division.

4. *The County Court.* The County Court will be a court of broad original jurisdiction in each county outside New York City, with jurisdiction over all civil matters involving less than $6,000 (up to $10,000 in larger counties), all criminal matters, all matters affecting children and the family, and the matters involving decedents' estates. Each county will have one or more judges elected by the voters of the county for a ten-year term. The number of judges in each county will be fixed by the Legislature, as many as required to dispose of the volume of business in the county. Appeals generally will be to the Appellate Division. Salaries for county judges will range from $12,500 in the smaller counties to $25,000 in the counties of Nassau, Suffolk and Westchester.

The decision to recommend such wide jurisdiction for the County Courts outside New York City is the major change from the Loeb proposal. The Loeb subcommittee had recommended that much of the jurisdiction now given to the County Courts—

covering decedents' estates, crimes prosecuted by indictment, and matters involving children and the family—be given to a "Superior Court" which would have been a trial court of unlimited jurisdiction with at least one judge per county. This court in general corresponds to the Supreme Court as proposed by the Temporary Commission, except for the provision that there be at least one judge per county. Under the Loeb proposal a "District Court" of each county would have absorbed the jurisdiction of the many existing courts of limited jurisdiction. This element of the Loeb proposal has been retained only within New York City where the General Court of the City of New York will be a court of truly limited jurisdiction, handling only day-to-day minor legal business.

This change from the Loeb proposal for courts in counties outside New York City reflects the Temporary Commission's conclusion from the testimony at its hearings that in upstate rural areas the judicial district is too large an area to be covered by a court dealing with such things as family and estate matters. Consequently, the Commission has given jurisdiction in these matters to the County Court.

This Committee is convinced that the Temporary Commission's distinction in treatment of the court system is well-designed to handle effectively the legal business arising in the upstate rural counties where distances are great and population relatively scattered. It is not, however, convinced that this distinction will necessarily meet effectively the needs of certain of the counties outside New York City, which are heavily populated and growing in population and where today a substantial volume of legal business is developed. At present Nassau, Westchester, Suffolk and certain upstate counties clearly fall into this category; it is likely, furthermore, that this will be true also of other areas in the foreseeable future.

In the counties which do have a substantial legal business for their courts, the Commission's Plan may result in an undue concentration of legal business in the County Courts at the expense of the Supreme Court. This concentration of cases may

create difficult administrative problems within the court itself and may overload the County Court judges with trivial litigation which could better be handled by a truly inferior court patterned after the General Court within New York City. This overloading would be particularly unfortunate in view of the important responsibilities assigned to the County Court judges and the substantial salaries they will be paid.

At least in an area outside New York City which has substantial legal business, it might be advisable to provide a court system paralleling that of New York City as an alternative in the proposed Judiciary Article, leaving it for the Legislature to determine from time to time which system should prevail in any particular judicial district or county.

Since this is essentially a new proposal and since it primarily concerns areas outside New York City, this Committee awaits with interest the testimony and comment on this feature of the Plan.

5. *The Magistrate's Court.* The Magistrate's Court will replace the present Justice of the Peace Courts and Police Justice Courts which are found in enormous numbers throughout the towns and incorporated villages of the State. This court will furnish day-to-day judicial service to the local community in minor matters. Its jurisdiction will be limited to arraignments in criminal matters and, on consent of the defendant, to trials of criminal offenses of a degree less than a misdemeanor and, on consent of both parties, to trials of civil matters involving less than $1,000. Appeals will go to the Appellate Term of the Supreme Court.

One magistrate will be elected in each town outside New York City, and those with more than 20,000 population will be permitted to have two magistrates. If the population exceeds 50,000, however, the Commission at present plans that no magistrate would be provided, since the judicial business in a community of that size would be sufficient to call for its disposition by full-time County Court judges. The Commission holds open for consideration, however, the possibility that Magistrates' Courts

be permitted in any city or town outside New York City, regardless of population.

Magistrates are not required to be lawyers or full-time officers. This represents the only departure from the Commission's general rule that all judges should be lawyers and full-time judges. The reason for this departure is that the Commission found it to be demonstratively impossible because of lack of lawyers in some rural areas, as well as impractical from the point of view of volume of business, geographical area and so on, to require that all magistrates be lawyers and serve full-time. The effect of this departure was mitigated by denying to the Magistrate's Court the power to try even minor cases, except on consent; such consent is not now required for trial before a Justice of the Peace or Police Justice. If magistrates are to function in the larger cities and towns, this Committee believes they should certainly be lawyers and wherever possible also full-time judges.

Non-lawyer magistrates will be required to attend prescribed courses of training before they may assume office. No magistrate will be permitted to serve at the same time on a town board, as is presently the case with Justices of the Peace in second-class towns.

D. *Administration of the Courts*

The Temporary Commission proposes that the Judicial Conference, through its State Administrator and its Deputy Administrators, will be in charge of the general administration of the court system. The Judicial Conference will be responsible for the general supervision of the period of transition from the present system to the new system, with full power to insure that all courts are organized and prepared to function by the transition date. All administrative and personnel matters, the fixing of salaries, and the determination of job qualifications, will be the responsibility of the Judicial Conference.

The Judicial Conference was originally established by the Legislature in 1955 and consists of the Chief Judge of the Court of Appeals as chairman, the Presiding Justice of the Appellate

Division in each Department, and one Supreme Court Justice from each Department elected by his fellow justices in the Department. There is also a Committee for Court Administration in each Department, with its membership drawn from the justices of the Supreme Court, judges of the inferior courts and practicing lawyers within the Department.

The proposed Judicial Article merely confers on the Judicial Conference general administrative authority over all the courts and specifies the composition of the Conference. It leaves to the Legislature the task of specifying the administrative powers and duties of the Judicial Conference. This Committee believes that giving the Judicial Conference administrative responsibility for the court system is a most desirable reform.

In addition to the general administrative power given to the Judicial Conference, the judges of the Appellate Division in each Department will have power to fix the times and places for holding terms of all the courts held in the Department, to assign the judges in the departments to hold terms, and to make rules for such courts. This too represents a much needed reform and gives to the Appellate Division far greater power over the inferior courts than it now has. No longer will judges of courts inferior to the Supreme Court be able to function at their own pleasure and without any supervision.

Practice and procedure in the courts may be regulated by the Legislature, but the new Judiciary Article authorizes the Legislature to delegate this power in whole or in part to a court or to the Judicial Conference. This Committee believes that the power should be so delegated. The Judicial Conference is better qualified to deal with these highly technical matters. Individual courts may adopt regulations consistent with the general practice and procedure.

The Supreme Court is also given the power to transfer cases to inferior courts, and inferior courts as well as the Supreme Court have the power to transfer cases up to the Supreme Court. The criteria for transfer are primarily the volume of cases being handled in a particular court plus the fact that cases raising im-

portant questions of law are to be transferred up to the Supreme Court. This Committee feels that the principle of unlimited transfer is excellent but the possibility exists that confusion among practicing lawyers may well arise, particularly if they believe that they can jockey their case into a particular court through the transfer rules. These rules should be clear, therefore, and there should also be some fairly detailed procedure for appraising the importance of a case well in advance of trial.

E. *Fiscal Reform*

The draft Judiciary Article provides that the cost of the court system is to be borne in the first instance by the State, with the Legislature being authorized to require reimbursement of this cost by the various counties, the City of New York, and other political subdivisions. This will make possible the preparation of a separate budget for the entire judicial system, so that a comprehensive plan of financing and expenditure can be put into effect. The Commission foresees that such a plan will be worked out through legislation.

A centralized budgetary system supervised by the Judicial Conference will be a tremendous improvement over the various procedures for fixing court budgets that now prevail throughout the State. At present certain of the New York City courts set their own budgets with impunity because under existing law the City of New York is required to pay whatever amounts the courts demand. In many communities, on the other hand, the judge must appear before the county board of supervisors and apply for court appropriations; it is not unusual for this board to include attorneys who practice before the judge. Disorganization and confusion in fiscal matters is commonplace. Different salaries are paid for the same jobs. Some courts have too many employees; others too few.

This Committee is in full accord with the proposal for a statewide budget controlled by the Judicial Conference. It may be, however, that some local communities will tend to oppose this

proposal on grounds that it will strip the community of its power to manage its own affairs, and may increase its tax burden against the community's wishes.

These fears appear groundless. In the first place, the membership of the Judicial Conference itself is designed to preserve the local autonomy of the different areas of the State. In addition, the Conference has a Deputy Administrator and a Committee on Court Administration in each Department to act as an additional safeguard for local interests. It is likely, moreover, that a unified court system with a state-wide budget will lead to fiscal economy rather than additional expense, since in many courts today there is much needless duplication of court facilities through maintenance of a number of specialized courts, none of which handles sufficient legal business to justify its operation. In the rare instance where the new system might impose additional expense upon a local community, the State itself might bear all or part of the additional expense.

A thorny problem may develop when the time comes to determine by legislation what portion of the court expenses is to be borne by the State as opposed to the governmental subdivisions in the State, particularly the various counties and the City of New York. The problem of allocation of expenses, however, appears separable from that of the state-wide budget. This budget will assure most efficient use of the necessary funds, regardless of their source. It is the Committee's hope that the problem of allocation will not be permitted to delay institution of the budgetary system for state-wide control of court expenses, nor to give rise to opposition to the provisions of the Judiciary Article which make such a budgetary system possible.

F. *Selection of Judges*

The Temporary Commission's Plan preserves the present method of selecting judges, that is, in general by election of the voters, with the exception of the judges of the General Court of

the City of New York. As to this court, the Temporary Commission leaves the method expressly open, the alternatives being election, appointment by the Mayor, or a combination of both.

The quality of our judges is, of course, the most important ingredient of a judicial system, and a method of assuring the highest quality in our judges is a goal for all to work toward. This Committee does not, however, at this time deal with the controversial and important question of elective versus appointive judges.

CONCLUSION

Publication of the proposal of The Temporary Commission on the Courts in substantially its final form marks the end of one stage in this effort to achieve a modern court system. We have not had a major reorganization of our courts since 1846. For 110 years we have been tinkering with the system. We have added a whole series of special courts to meet special problems as they arose. As a result the system has grown into the present hodgepodge.

Times have changed. We have reorganized the executive branch of our State Government to meet modern needs but not the judicial branch. Popular demand for a modern system to meet modern needs has been frustrated by the inertia of the system itself and the great difficulty of the process of Constitutional amendment.

If this important reform is to take place, now is the time. Three years of study have gone into it. If this opportunity is lost, it may be many years before there will be another.

To succeed, supporters of court reform must make a sustained effort beginning now and continuing through the general election in the fall of 1959. Once the Judiciary Article has been adopted, the stage will be set for adoption of the legislation which will complete the task. Only then can the State of New York enjoy a judicial system adapted to modern needs and able to offer its citizens the efficient administration of justice to which

they are entitled. This Committee believes that every citizen should lend wholehearted support to this far-reaching proposal.

FRANCIS H. HORAN, *Chairman*

LOUIS M. LOEB, *President of the Association, ex officio*

MANDEVILLE MULLALLY, JR., *Secretary of the Association, ex officio*

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ALBERT R. CONNELLY, *Liaison Member of the Executive Committee*

August 15, 1956

The Prosecutor—A Review*

After a notable success with a memoir, *Trial Judge,* Mr. Justice Botein in *The Prosecutor* has used the novel as a device to discourage "through a critical public" the use of certain methods by prosecutors which he considers a threat to the administration of criminal justice. One appreciates that if the Judge were not so eager to create an enlightened and critical public, which alone can ameliorate the evils he describes, he would not have chosen to turn novelist, a role which in an epilogue he suggests was not an easy one for even a skilled writer of excellent judicial opinions.

What are these "prosecuting methods" which the Judge has wanted to make vivid, not to lawyers, judges or officials, but to the public? They are the methods used by the "ruthless, resourceful prosecutor, indifferent to the rights of defendants" who knows it "is safer politically for a prosecutor to ride roughshod over the rights of an accused, provided he does so with energy and fanfare, than to proceed cautiously with scrupulous regard for those rights."

Judge Botein finds such a prosecutor in the protagonist of his novel, Edgar Bailey, an Assistant District Attorney. Bailey is somewhat larger than life, because he is an amalgam of almost all the unsavory traits which either singly or in clusters have made some prosecutors infamous, both in the courts and recently before Congressional Committees as well. (The reader will get a wry satisfaction out of trying to trace the author's sources of Bailey's character.) Bailey has graduated from all the right schools, but has learned all the wrong lessons. He is able and ruthless, with a passion for power. He is as quick as a gangster to knife a colleague and as slick as a Madison Avenue huckster at getting a favorable press for misdeeds.

Edgar got his job from the newly-appointed District Attorney, John Peabody, a friend and law partner of his father. Peabody, an excellent lawyer, wears baggy tweeds and will make an excellent

* Botein, Bernard. The Prosecutor, 1956, Simon & Schuster, New York. 273pp.

Santa Claus at the office Christmas party. As a D. A. he does not recognize and finds he cannot control the rich man's juvenile delinquent he has hired. In a series of case studies Judge Botein drives home his theme that the immense power necessarily placed in the prosecutor to decide who shall and who shall not be prosecuted, and the procedures of investigation employed make it easy for an Edgar Bailey to grasp at fame and power and to dupe the public.

The case studies are all exciting and the prosecuting processes have a ring of authenticity. Judge Botein says he has tried to capture "the color and the glory and the crackling excitement" of the D. A.'s office. Most readers will agree he has succeeded and will find it hard to put the book down. Undoubtedly some will be disturbed by the novel's lack of literary pretensions. The author, one can be sure, will be satisfied if the book makes the public aware that for all our checks and balances, for all our procedural safeguards, the power of the prosecutor is a very great one and one that can be used for evil. As in so many other areas of government, only a vigilant and informed public can check abuse of power. In helping to create that public Judge Botein has once again made an important contribution to the administration of justice.

P.B.D.

Recent Decisions of the United States Supreme Court

By Edwin M. Zimmerman and John D. Calhoun

BOUDOIN V. LYKES BROS. S.S. CO.,
(348 U. S. 336, February 28, 1955)
(350 U. S. 811, October 10, 1955)

CAHILL V. NEW YORK, N. H. & H. R. CO.,
(350 U. S. 898, November 21, 1955)
(350 U. S. 943, January 9, 1956)
(351 U. S. 183, May 14, 1956)

By its orders in these cases, the Supreme Court seriously distorts the express mandate of Rule 58(4), *Supreme Court Rules.*

Rule 58(4) provides:

"Consecutive petitions for rehearings, and petitions for rehearing that are out of time under this rule, will not be received."

The *Boudoin* case was a suit by an American seaman against the owner-operator of an ocean freighter on which plaintiff formerly had been employed. Cross-appeals were taken from a judgment of the district court in plaintiff's favor, plaintiff claiming: (a) the amount of damages awarded him was inadequate; and (b) the term of maintenance determined by the trial court was insufficient and should have been extended and increased. The court of appeals disregarded those alleged errors, holding that plaintiff was entitled to recover nothing at all. The Supreme Court granted certiorari (348 U.S. 814) and therafter reversed (348 U.S. 336). Some time outside the 25-day period allowed for petitions for rehearing (Rule 58(1), *Supreme Court Rules),* plaintiff moved the Court to amend their judgment so that the court of appeals could adjudicate the question of the amount of damages. That motion was granted. 350 U.S. 811.

The *Cahill* case was an action under the Federal Employers' Liability Act to recover for injuries sustained by the plaintiff while working as a railroad brakeman. The court of appeals reversed a judgment for plaintiff on the ground that there was insufficient evidence to permit submission of the case to the jury. That conclusion made it unnecessary for the court of appeals to pass on a second error alleged by defendant railroad, *i.e.,* that the trial judge erroneously had admitted evidence of prior accidents at the scene of plaintiff's injury for the purpose of showing negligence by defendant in failing to warn plaintiff of the dangers that had caused those prior accidents. In a single decision, the Supreme Court granted certiorari and reversed, Mr.

Justice Reed dissenting. 350 U.S. 898. Justices Frankfurter, Burton and Harlan, expressing the view that certiorari should not be granted in the *Cahill* case, declined to pass upon its merits. Thereafter, and within the time permitted by Rule 58(1), the defendant-railroad sought by petition for rehearing to have the judgment of the Supreme Court modified, to provide for a remand of the cause to the court of appeals for further procedure on the second alleged ground of error. That petition for rehearing was denied (350 U.S. 943), and the case was returned in due course to the district court. After denial of the petition for rehearing and after expiration of the time in which a petition for rehearing may be received under Rule 58(1), the railroad moved for recall and amendment of the judgment of the Court, requesting relief identical to that which it had sought in the denied petition for rehearing. Prior to the filing of that motion for recall, and after denial by the district court of an application for stay of execution, judgment was satisfied, although petitioner, in its papers moving for recall, claims that it had informed respondent it intended to pursue its remedies notwithstanding payment of judgment. Relying on the *Boudoin* case as showing

> ". . . that Rule 58(4) does not prohibit motions to correct this kind of error,"

the Supreme Court granted the railroad's motion to recall. 351 U.S. 183.

The opinion in the *Cahill* case came *per curiam*, a dissenting opinion being filed by Mr. Justice Black, with whom The Chief Justice and Justices Douglas and Clark joined. The dissenters there strenuously object that

> "What is in fact a second petition for rehearing should not be received simply because it is labeled a 'motion to recall.' "

The *Boudoin* case is distinguished by the fact that it did not entail a second review by the Court of its judgment of reversal. Although conceding that second petitions for rehearing should be received in situations where rigid application of Rule 58(4) would cause manifest injustice, it is urged that "this is no such case." Noting that the Supreme Court has power to assess questions left undecided by courts of appeals, particularly upon unsubstantial points, the dissenters, citing *District of Columbia v. Armes*, 107 U.S. 519, urge that the claimed error relating to admission of evidence concerning prior accidents is frivolous. They recognize the general rule that a voluntary payment of judgments amounts to accord and satisfaction and contend that even if the railroad believes that it paid under duress, such

> ". . . question should be tried as one of fact before this Court takes the drastic action of trying to make a plaintiff pay back money he has received under an order of this Court."

• • • •

One measure of the vitality of the judicial process is the way that process handles its harassment by trivia. Rule 58(4), until the *Boudoin* and *Cahill*

cases, was an effective measure, protecting the Court from the burden of tardy and repetitive urgings that it reconsider judgments.

Rule 58(2) relating to petitions for rehearing of orders on petitions for writs of certiorari, states that such petitions must be

> ". . . confined to intervening circumstances of substantial or controlling effect . . ., or to other substantial grounds available to petitioner although not previously presented."

To some, it would seem appropriate to set those same standards against petitions for rehearings of judgments or decisions. But even granting the propriety of a standard commodious enough to permit the out-of-time repair of judgment allowed in *Boudoin*, justification for twice adjudicating such an issue, as in *Cahill*, is difficult to find.

The Court repeatedly has stressed the importance of having opportunity for reflective thought. Most recently, in this connection, Mr. Justice Frankfurter opined:

> ". . . Without adequate study there cannot be adequate reflection. Without adequate reflection there cannot be adequate deliberation and discussion. And without these, there cannot be that full interchange of minds which is indispensable to wise decision and its persuasive formulation." 351 U.S. 470, 485.

Recognition of those considerations by Mr. Justice Frankfurter makes his position, in *Cahill* (and to the extent that they share his recognition, the position of Justices Burton and Harlan) anomalous. Those three Justices were unwilling to pass upon the merits of the *Cahill* case when the Court first took it on certiorari and reversed. However, they constitute three-fifths of that majority which voted for recall of judgment. As we must suppose, those Justices declined in the first instance to pass upon the merits of *Cahill* because they believed resolution of the sum of conflicts there involved would inappropriately occupy the time and thought of the Court. It is difficult, therefore, to see why they would later emasculate Rule 58(4), by creating a new third round in the process of decision, only to get at a once-adjudicated fragment of the case.

SOUTHERN PACIFIC CO. V. GILEO,
SOUTHERN PACIFIC CO. V. ARANDA,
SOUTHERN PACIFIC CO. V. MORENO,
(351 U. S. 493, June 11, 1956)

REED V. PENNSYLVANIA R. CO.,
(351 U. S. 502, June 11, 1956)

By 1939, construction by the Supreme Court of Section 1 of the Federal Employer's Liability Act had limited recovery under that Act only to cases

where both the railroad worker, at the moment of his injury, and the railroad, were actually engaged in interstate commerce. Railroad employees engaged in construction of new facilities were not covered. Office personnel of railroads, no matter how closely their work affected performance of interstate haulage, were not covered. In 1939, Congress amended Section 1 of FELA to provide:

> "Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this Act, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this Act. . . ."

The above cases raised these questions: Whether (1) an employee of an interstate rail carrier, injured while performing work on (a) new cars [*Gileo*], (b) new wheels for cars [*Aranda*], and (c) new switching facilities in a retarder yard [*Moreno*], all used in connection with interstate commerce by the carrier, and (2) a clerical employee of a railroad [*Reed*] are within the coverage of FELA.

Following their injury, respondents Gileo, Aranda and Moreno brought suit in California, claiming under FELA. In each case, petitioner-railroad contended that neither it nor respondent were engaged in interstate commerce at the time of injury. The railroad urged that FELA, therefore, did not apply and that the courts were without jurisdiction to entertain the actions based upon that Act. The Supreme Court of California ruled in favor of respondents, holding, as a matter of law, that FELA governed. Certiorari was granted because the cases involved interpretation of an important federal statute governing railroad employer obligations to employees. 350 U.S. 818.

In the *Reed* case, petitioner was employed as a clerical worker in respondent's office building in Philadelphia. Her duties consisted of filing tracings of engines, cars, parts, tracks, bridges, and other structures, from which blueprints of those items could be made. The files with which petitioner worked are the sole depository of respondent for such original tracings. Petitioner's function was to secure tracings from the files when orders for drawings were received and to return the tracings after drawings had been made. Approximately 67% of all drawings made were sent outside Pennsylvania. Following injury in the course of such duties caused by a bursting window pane, petitioner sued under FELA. The district court, granting a motion to dismiss the suit, held that petitioner was not within the coverage of Section 1 of FELA and, diversity being wanting, concluded itself to be without jurisdiction. The Court of Appeals for the Third Circuit affirmed. The Supreme Court granted certiorari for the reasons that controlled in the *Gileo*, *Aranda* and *Moreno* cases. 350 U.S. 965.

The decisions below in *Gileo*, *Aranda* and *Moreno* were affirmed and the

decision in *Reed* reversed, in two opinions by Mr. Justice Minton. Dissents to those first three cases were registered by Justices Reed and Frankfurter and dissent to the decision of the Court in *Reed* was registered by Justices Reed, Frankfurter, Burton and Harlan, Mr. Justice Burton relying upon the reasons stated below in the opinion of the court of appeals and Justices Reed and Harlan joining in a dissenting opinion of Mr. Justice Frankfurter.

The Court has given a broad sweep to the language of Section 1. Rejected is the contention of the dissenters that "commerce" in the act, means only transportation, a contention based upon a reading of the legislative and judicial history of pre-amendment Section 1 which strongly suggests

> ". . . that the '1939 amendment was designed' . . . only in relation to employees who work in the context of the hazardous business of transportation. The amendatory legislation was addressed to . . . transportation workers."

For the majority

> '. . . The test for coverage under the amendment is not whether the employee is engaged in transportation, but rather whether what he does in any way furthers or substantially affects transportation."

The test is the logical product of the Court's conclusion that amended Section 1 evinces a purpose both to expand coverage substantially as well as to avoid narrow distinctions in deciding questions of coverage. The statute, although requiring examination of the purpose and effect of the employee's function in the railroad's interstate operation, does not limit such examination to transportation employees or rest determination on the basis of the employee's importance as an individual in the railroad's organization. The Court sets no explicit criteria for defining the limits of coverage but is satisfied to leave those duties which further or which in any way directly or closely and substantially affect interstate commerce in the railroad industry to be marked out in case-by-case adjudication.

* * * *

These decisions would seem to place within the orbit of FELA most employees of interstate carriers, for, as the court of appeals noted when passing upon the *Reed* case, any performance of duty by a railroad employee may be said, in a sense, to further the transportation function of the road.

The generality of these decisions in granting broad extension to FELA coverage leaves a serious social problem lurking for the future. The FELA remedy, as the dissenters have noted, is exclusive. *New York Central R. Co. v. Winfield*, 244 U.S. 147. If an injured employee can prove negligence, he may be better off than under local Workman's Compensation Laws. However, where the employer has acted with care, FELA leaves the injured worker to recuperate on his own resources.

UNITED STATES V. E. I. DU PONT

(351 U.S. 377, June 11, 1956)

The question in this case was whether du Pont monopolized trade in cellophane in violation of Section 2 of the Sherman Act. During the period relevant to the action, du Pont produced almost 75% of the cellophane sold in the United States. But sales of cellophane constituted less than 20% of all "flexible packaging material" sales. Section 2 declares illegal the monopolization of "any part of the trade or commerce" and the Government contended that du Pont's domination of cellophane production constituted a monopolization of "part" of commerce in violation of Section 2. The defendants successfully argued in the court below that cellophane was but part of the much larger flexible packaging material market and that as a result it did not possess monopolistic power to control the price of cellophane or to exclude competitors from the market in which cellophane is sold.

The issue in the case therefore was whether the market to be examined was that for cellophane alone or for all flexible packaging materials, with cellophane but one of several competitive commodities. The Government argued that cellophane and other flexible packaging materials are neither substantially fungible nor of a like price, and for these reasons that the market for other wrappings is distinct from the market for cellophane.

The Supreme Court, in a four-to-three decision, affirmed the lower court and held for defendants.

Justice Reed's opinion stated:

> "In considering what is the relevant market for determining the control of price and competition, no more definite rule can be declared than that commodities reasonably interchangeable by consumers for the same purposes make up that 'part of the trade and commerce', monopolization of which may be illegal."

The fact that differences in selling prices or quality of the wrapping materials existed did not inevitably segregate them into separate markets. "* * * whatever the price, there are various flexible wrapping materials that are bought by manufacturers for packaging their goods in their own plants or are sold to converters who shape and print them for use in the packaging of the commodities to be wrapped." Though superior to other materials in certain characteristics, cellophane shared the packaging market in food products and cigarettes with the other materials. A considerable degree of functional interchangeability existed, with retailers shifting between cellophane and other materials for certain purposes. The Court also concluded from the record that a great degree of cross-elasticity existed among the various products, so that a slight price change would cause a number of customers to switch from one material to another. The Court, therefore, held that cellophane's interchangeability with the other materials sufficed to make it a part of the flexible packaging market.

To the Government's argument that the price variation between cel-

lophane and other materials demonstrates that they are noncompetitive, the opinion responded by citing findings to the effect that the cost difference to some extent resulted in a loss of business and that prices had been reduced to expand sales, thereby negating the possibility of the existence of a monopoly. It was not cost but "the variable characteristics of the different flexible wrappings and the energy and ability with which the manufacturers push their wares that determine choice."

The test for the market was restated to be that the market is "composed of products that have reasonable interchangeability for the purpose for which they are produced—price, use and qualities considered." It seemed to the Court that du Pont should not be found to monopolize cellophane when that product had the interchangeability with other wrappings that this record showed.

In the course of reaching his result, Justice Reed, paused to comment on what constituted monopolization, and inserted the following:

> "Senator Hoar, in discussing § 2, pointed out that monoply involved something more than extraordinary commercial success, ' that it involved something like the use of means which made it impossible for other persons to engage in fair competition.' This exception to the Sherman Act prohibitions of monopoly power is perhaps the monopoly 'thrust upon' one of *United States* v. *Aluminum Co. of America,* 148 F. 2d 416, 429, left as an undecided possibility by *American Tobacco Co.* v. *United States,* 328 U.S. 781."

Whether Justice Reed may have hoped by this language to help decide that possibility is open to conjecture. At any rate, Justice Frankfurter, who joined Justices Burton and Minton to form the majority in the result reached, refused to join in Justice Reed's opinion insofar as it discoursed on monopoly, which Justice Frankfurter regarded as superfluous to the needs of the disposition of the case before the Court.

Two Justices, Clark and Harlan, took no part in the case, and Chief Justice Warren wrote the dissent, joined by Justices Black and Douglas.

The dissent regards the majority's definition of the market as one which virtually emasculates Section 2 of the Sherman Act. Qualitative differences between cellophane and other wrapping materials were regarded by Justice Warren as substantial, and in support of that contention he points to what he regards as evidence of the fact that consumers regarded cellophane as a product apart. Hence, despite the fact that some of the other materials were substantially less expensive than cellophane, cellophane was purchased in increasing amounts in the period from 1923 to 1947 covered by the complaint. Moreover, the substantial decline in the price of cellophane did not have the result of forcing a decline in the price of the so-called competitive products. The dissent also pointed to the great profit which du Pont made from cellophane as evidence of a monopolistic position. The fact that it could not set prices arbitrarily did not seem relevant to the dissent since even in a monopoly higher prices will mean smaller sales and the monopolist would have to balance decreased sales against increased profit margin per

unit in order to maximize profits. The fact that du Pont did not engage in predatory practices merely demonstrated that the monopoly power was used in an enlightened manner, but does not undo the violation. "The public should not be left to rely upon the dispensations of management in order to obtain the benefits which normally accompany competition."

• • • •

There seems to be little question of the proposition that interchangeable products must be considered when defining a market. But that merely restates the problem. The thrust of the dissent's argument is that the products are not in fact interchangeable. The test stated by the majority is, perhaps inevitably, none too precise. The "market is composed of products that have reasonable interchangeability for the purpose for which they are produced—price, use and qualities considered." The majority opinion illustrates that some differences in cost and characteristics are not enough to differentiate a market, for purposes of the Sherman Act, where the products can be used for the same purpose. The economic evidence advanced by the dissent is not so much refuted as overruled as a matter of antitrust law policy. At some point or another, not yet defined by this opinion, price and quality differences may, by themselves, be sufficient to render a given commodity separate and distinct from another. But that will be another case. In the meantime this case is cue for a broader definition of the relevant market.

Committee Report

COMMITTEE ON PROFESSIONAL ETHICS

OPINION NO. 818

Question: A foreign language newspaper in the City of New York proposes to undertake a program whereby its readers will be advised through a column entitled "Legal Clinic" that, if they need legal advice but cannot afford to pay a lawyer or if they do not as yet know enough English to seek advice, the newspaper will secure assistance for them without charge. In aid of this program the newspaper plans to invite the participation of a number of lawyers who speak or understand the foreign language to act without compensation either from the newspaper or the client. The column will set forth the dates on which the attorneys will be present at the office of the newspaper for consultation. If it appears that the applicant's income is such as to enable him to pay for legal advice or if the matter presents the prospect of contingent fee, the applicant will be referred to the Referral Service of the Bar Association.

Will an attorney who participates in this program violate any of the Canons of Professional Ethics?

Answer: In the opinion of the Committee, the proposed plan will violate Canon 35 of the Canons of Professional Ethics, which prohibits the intervention of a lay intermediary between lawyer and client. The specific exception that is made as to charitable societies rendering aid to the indigent is not applicable in this case.

The plan further appears to be contrary to Rule I–A of the Special Rules Regulating the Conduct of Attorneys and Counsellors at Law in the First Judicial Department. This Rule prohibits an attorney from advising inquirers or rendering an opinion to them through or in connection with a publicity medium of any kind in respect to their specific legal problems, whether or not the attorney is compensated for his services.

While the Committee does not pass upon questions of law, attention is called to the provisions of Penal Law Section 280, which, among other things, prohibits corporations and voluntary associations from furnishing attorneys or counsel and from rendering legal services of any kind. See also Canon 47.

October 1, 1956

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SELECTED LITERATURE ON LEGAL ETHICS

> *"The things we hold dearest on earth—our fortunes, reputations, domestic peace, the future of those dearest to us, nay, our liberty and life itself, we confide to the integrity of our legal counsellors and advocates. Their character must be not only without a stain, but without suspicion."*
>
> GEORGE SHARSWOOD

In 1854, Judge George Sharswood of the Philadelphia Bar was persuaded to publish a series of lectures which he had delivered before the law class of the University of Pennsylvania on the "Aims and Duties of the Professor of the Law." This volume had a profound influence on the teaching of this subject and on the members of the Bar. It ran through at least five editions and was reprinted by the American Bar Association in 1907 at the personal expense of one of the members of this Association, General Thomas H. Hubbard.

Since then important contributions have been made by such authorities as Charles A. Boston, Elliott E. Cheatham, Henry S. Drinker, Reginald Heber Smith and others. Now a little more than a century later, The Association of the Bar of the City of New York and the New York County Lawyers' Association, both of whom have pioneered in the application of legal ethics, have issued a volume containing the questions and answers of their respective committees on legal ethics. May this volume receive the same favorable reception as extended to Judge Sharswood's study by an earlier generation of lawyers.

Advertising, solicitation and legal ethics. 1954. 7 Vand. L. Rev. 677–694.
Akers, G. M. Hoffman's fifty resolutions. 1953. 14 Ala. Law. 171–188.
Albuero, Francisco R. Ethics and the lawyer. Manila, ECA Pub. Co., 1950. 290p.
Ambulance chasing. 1955. 30 N. Y. U. L. Rev. 182–193.

American Arbitration Association. Code of ethics and procedural standards for labor management arbitration. New York, Bernheimer Arbitration Education Fund. 1951. 10p.

American Bar Association. Statement of principles with respect to the practice of law. 1956. 2 Martindale Hubell Law Directory. 105A–112A.

American Bar Association. Committee on Professional Ethics and Grievances. Opinions of the Committee on Professional Ethics and Grievances. Chicago, 1947. 617p.

Arant, Herschel W. Cases and other materials on the American bar and its ethics. Chicago, Callaghan, 1953. 687p.

Association of the Bar of the City of New York. Committee on Professional Ethics. Opinions of the Committees on Professional Ethics of the Association of the Bar of the City of New York and the New York County Lawyers' Association. New York, Columbia U. Press, 1956. 876p.

Attorney accountant: ethical problems in the joint practice of law and accounting. 1956. 3 U. C. L. A. L. Rev. 360.

Attorney and client: what constitutes extortion in collection letters.. 1952. 36 Marq. L. Rev. 175–83.

Attorneys use of the fifth amendment by an attorney as grounds for disbarment. 1956. 31 Notre Dame Law. 465.

Bashore, G. T. Advertising and solicitation by members of the bar. 1954. 16 Ala. Law. 63–75.

Battle G. G. The duty of counsel in defending against a criminal charge a client whom he knows or has reason to believe to be guilty. New York, 1911. 26p.

Benton, Josiah H. The lawyer's official oath and office. Boston, Boston Book Co., 1909. 133p.

Boldt, G. H. Should Canon 35 of the Code of Judicial Ethics be revised. 1954. 16 Fed. R. D. 83–91.

Boston, Charles A. Address on the proposed Code of Professional Ethics. New York, Chambers Print Co., 83p.

Boston, Charles A. Legal ethics. 1920. 9 Johns Hopkins M. 29–41.

Boston, Charles A. Practical activities in Legal Ethics. 1913. 62 U. of Pa. L. Rev. 103.

Boston, Charles A. The recent movement toward the realization of high ideals in the legal profession. Chicago, American Bar Assn., 1912. 52p.

Botein B. Accident fraud investigation: report to the Appellate Division of the Supreme Court. Albany, 1929. 23p.

Boulton, William W. A guide to conduct and etiquette at the bar of England and Wales. London, Butterworth, 1953. 85p.

Brand, George E. Bar associations, attorneys, and judges. Chicago, American Judicature Society, 1956. 1074p.

Brown, O. J. Insurance lawyer looks at the proposed Canon. 1955. 22 Ins. Counsel J. 189.

Cady, J. Rider. Spirit of the bar, an address in the Hubbard course on legal ethics. Albany, 1918, 14p.

Cahn, Edmond N. Ethical problems of tax practitioners: transcript of Tax Law Review's 1952 banquet. Opening remarks. 1952. 8 Tax L. Rev. 1–33.
Cahn, Edmond N. The moral decision right and wrong in the light of American law. Bloomington, Indiana Press, 1955. 342p.
Canales, José T. Ethics in the profession of law. San Antonio, 1953. 59p.
Carey, J. L. Ethics, unauthorized practice, and federal income taxation, an accountant's viewpoint. 1953. 25 Rocky Mt. L. Rev. 405–498.
Carson, Hampton L. Legal pathology; an address in the Hubbard course on legal ethics delivered before students of the Albany Law School. Albany, 1919. 29p.
Carter, Orrin N. Ethics of the legal profession. Chicago, Northwestern U. Press, 1915. 116p.
Chadbourn, J. H. High ethical standards and professional ideals, the problem of inculcation at the student level. Teaching legal ethics in law school. 1955. 51 Brief. 17.
Cheatham, Elliott E. Cases and materials on the legal profession. Brooklyn, The Foundation Press, 1955. 577p.
Cheatham, Elliott E. and Lewis, Gabriel I. Committees on legal ethics. 1935. 24 Cal. L. Rev. 28–38.
Cheatham, Elliott E. Legal ethics and professional responsibility, a symposium. The lawyer's role and surroundings. 1953. 25 Rocky Mt. L. Rev. 405–498.
Cohen, Julius H. Unethical practices in bankruptcy. New York, National Assn. of Credit Men. 1920. 16p.
Conflicting interests: vicarious disqualification after dissolution of a partnership. 1955. 3 U. C. L. A. L. Rev. 105.
Costigan, George P. Cases and other authorities on the legal profession and its ethics. St. Paul, West Pub. Company, 1933. 768p.
Cox, Hon. Louis S. and Luther, Willard B. Applied ethics. From writ to rescript. New York, Little Brown and Company. 1941. 9p.
Crotty, H. D. Character and the law schools: professional conduct should be emphasized. 1953. 39 A. B. A. Jour. 385–388, 437–438. 1953. 22 Bar Exam. 107–116.
Curtis, C. P. Ethics in the law. 1952. 4 Stanford L. Rev. 477–490.
Cutler, A. S. Is a lawyer bound to support an unjust cause. 1952. 38 A. B. A. J. 300–302p.
Dos Passos, John R. The American lawyer as he was, as he is, as he can be. New York, The Banks Law Pub. Co., 1907. 185p.
Drinker, Henry S. Legal ethics. New York, Columbia U. Press, 1953. 448p.
Drinker, Henry S. Legal ethics. 1955. Ann. Am. Acad. 37–45.
Drinker, Henry S. Legal ethics, a symposium. Addresses. The ethical lawyer. 1954. 7 U. Fla. L. Rev. 375–483.
Drinker, Henry S. Legal specialists: specialized legal service. 1955. 41 A. B. A. J. 690.
Drinker, Henry S. Problems of professional ethics in matrimonial litigation. 1953. 66 Harv. L. Rev. 443–464.

Drinker, Henry S. Some remarks on Mr. Curtis, the ethics of advocacy. 1952. 4 Stanford L. Rev. 349–57.
Embree, William D. May a Lawyer lie for his client? 1952. 10 N. Y. Co., Lawyers' Ass'n. 41–44.
Enforceability of canon prohibiting attorneys testimony on behalf of client. 1955. 33 N. C. L. Rev. 296–301.
Ethical propriety of an attorney's testifying in behalf of his own client. 1952. 38 Ia. L. Rev. 139–146.
Ethical standards and professional conduct. 1955. Ann Am. Acad. 1–124p.
Fain, W. H. Legal ethics, compilation of statutes and court rules providing for the conduct of attorneys. New York, 1910. 110p.
Francisco, Vicente J. Legal ethics. Manila, East Pub. 1949. 602p.
Gisnet, Morris. A lawyer tells the truth. New York, J. P. Kahn Co., 1931. 160p.
Grace, J. R. Professional ethics. 1956. 18, 19, Tex. B. J. 629, 689, 79, 139, 209, 339.
Harned, H. H. Morally wrong, legally right. 1955. 19 Ky. S. B. J. 186.
Harpster, J. F. Christian advocacy. 1952. 35 Marq. L. Rev. 413–419.
Harris, Arthur M. Letters to a young lawyer. St. Paul, West Pub. Co., 1912. 193p.
Hellerstein, J. R. Ethical problems in office counselling. 1952. 8 Tax L. Rev. 1–33.
Hicks, Frederick C. Organization and ethics of the bench and bar. New York, The Lawyers Co-operative Pub. Co., 1932. 606p.
Hicks, Frederick C. Unauthorized practice of law. Baltimore, American Bar Assn., 1934. 213p.
Hubbard, T. H. and Baldwin, S. E. Legal ethics, lectures. Albany, 1903. 43p.
Institute of Judicial Administration. Lawyer idemnity plans. St. Paul, Minn., West Pub. Co., 1955. 42p.
International Code of Ethics for Lawyers. 1954. 30 N. Z. L. J. 241–242.
Jessup, Henry W. The professional ideals of the lawyer. New York, G. A. Jennings Co., 1925. 292p.
Kaplan, W. M. Forbidden retainers. 1956. 31 N. Y. U. L. Rev. 1914.
King, E. C. and Sears, D. W. The ethical aspects of compromise, settlement and arbitration. 1953. 25 Rocky Mt. L. Rev. 405–498.
Lamb, A. R. Legal ethics. 1955. 23 J. B. A. Kan. 363.
Lanford, D. Professional ethics and the disciplining of attorneys in regard to false records, documents, and pleadings. 1954. 7 Ala. L. Rev. 92–98.
Lund, Thomas G. Some additional aspects of professional conduct and etiquette. London, 1951. 79p.
McCoy, P. Some professional responsibilities of the practicing lawyer. 1953. 25 Rocky Mt. L. Rev. 405–498.
McCoy, P. Canons of ethics, a report of the profession, 1956. 26 Utah B. Bull. 19.

McDaniel Glen. Ethical problems of counsel for big business. 1952. 38 Am. Bar Assn. J. 205–208p.

MacKinnon, F. B. Lawyers' problems of ethics and good practice. 1954. 5 Harv. L. S. Bull. 3–5.

McLennan, Peter B. The trial lawyer and the trial of actions, a lecture in the Hubbard course on legal ethics. Albany, 1908. 11p.

Madden, J. W. In justice blind. 1952. Ann. Am. Acad. 60–66p.

Moral and ethical considerations in tax practice. 1953. 37 Marq. L. Rev. 85–91.

New York County Criminal Courts Bar Association. Code of ethics and principles for the prosecution and defense of criminal cases. New York, E. Leven, 1940. 12p.

Otterbourg, E. M. Ethics and unauthorized practice. 1956. 19 Tex. B. J. 15.

Palmer, B. W. Self-advertising by lawyers. 1953. 39 A. B. A. J. 301–303.

Paul, R. E. The lawyer as a tax adviser. 1953. 25 Rocky Mt. L. Rev. 405–498.

Phillips, Orie L. Conduct of judges and lawyers, a study of professional ethics, discipline, and disbarment. Los Angeles, Parker, 1953. 247p.

Pound, Roscoe. The etiquette of justice. Omaha, Klopp and Bartlett, 1908. 25p.

Professional ethics, a panel. 1955. 9 Ark. L. Rev. 294.

Professional ethics, some problems in legal ethics raised by television programs. 1955. 37 Chi. B. Rec. 26.

Ratner, P. H. Advancing money to clients, whether unethical. 1955. 15 NACCA L. J. 410.

Reeve, H. L. Law Day, a day of accountability. 1953. 25 Rocky Mt. L. Rev. 405–498.

Robbins, Alexander H. A treatise on American advocacy, based upon the standard English treatise, entitled Hints on advocacy. St. Louis, Central Law Journal Co., 1904. 295p.

Roberts, O. J. The lawyer's duties to his clients. 1954. 7 U. Fla. L. Rev. 375–483.

Schachner, B. Ethical problems in tax prosecutions. 1952. 8 Tax L. Rev. 1–33.

Schillin, J. G. Professional ethics. 1955. 2 La. B. J. 283–286.

Sharswood, George. An essay on professional ethics. 5th ed., Philadelphia, T. and J. W. Johnson Co., 1907. 196p.

Slater, George A. Corporate fiduciaries and legal ethics. New York, 1932. 24p.

Smith, H. W., Jr. Professional ethics. 1943. 21 J. B. A. Kan. 346–351.

Snow, C. B. Professional ethics from the practice standpoint, address. 1952. 23 Miss. L. J. 336–343.

Sokolsky, G. E. The ethics of lawyers from the layman's viewpoint. 1954. 7 U. Fla. L. Rev. 375–483.

Solicitor and professional ethics. 1956. 30 L. Inst. J. 104.

Stevens, G. N. Professional responsibility, the role of the law school and the bar. 1953. 6 J. Legal Ed. 203–208.

Tarleau, T. N. Ethical problems in dealing with Treasury representatives. 1952. 8 Tax L. Rev. 1–33.

Vom Baur, F. T. Whether, in case of adjudication proceedings before agency tribunals, Canons of Professional and Judicial Ethics, properly adapted, should be applicable to lawyer practitioners and agency members. 1954. 21 J. A. B. A. D. C. 99–109.

Wandell, Samuel H. You should not. Albany, M. Bender, 1896. 100p.

Warren, Samuel. The moral, social and professional duties of attorneys and solicitors. Albany, J. D. Parsons, Jr., 1870. 304p.

Warvelle, George W. Essays in legal ethics. Chicago, Callaghan and Co., 1902. 234p.

Weeks, Edward P. A treatise on attorneys and counsellors at law. 2d ed. San Francisco, Bancroft Whitney Co., 1892. 918p.

Wherry, W. M. Two sets of Canons give young lawyers most trouble. 1954. 22 Hennepin Law. 124–127.

Wood, Earl W. Free contracts of lawyers, with forms. New York, Prentice Hall, 1936. 432p.

Yankwich, L. R. Legal ethics; address. 1953. 28 L. A. B. Bul. 319–320, 343–347.